



California Regulatory Notice Register

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PROPOSED ACTION ON REGULATIONS

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Milk Producers Security Trust Fund Claims—Notice File No. Z02-0211-01 405

TITLE 5. BOARD OF EDUCATION

High School Equivalency Certificate (GED)—Notice File No. Z02-0206-01..... 407

TITLE 10. DEPARTMENT OF CORPORATIONS

Franchise Investment Law: Out of State Sales—Notice File No. Z02-0125-02 409

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Racial Profiling Course—Notice File No. Z02-0211-05 410

TITLE 13. CALIFORNIA HIGHWAY PATROL

Motor Carrier Safety—Bus Driver's Seat—Notice File No. Z02-0125-03..... 412

TITLE 15. BOARD OF PRISON TERMS

*Witness and Subpoena Regulations; Review of Violation Reports; Purging of Warrants—
Notice File No. Z02-0213-01*..... 414

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

Low-Pressure Fuel Evaporative Systems Test—Notice File No. Z02-0211-03..... 416

TITLE 16. STRUCTURAL PEST CONTROL BOARD

Fees—Notice File No. Z02-0211-04 419

TITLE 24. CALIFORNIA ENERGY COMMISSION

Building Energy Efficiency Standards—Notice File No. Z02-0211-02..... 421

GENERAL PUBLIC INTEREST

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Variance—City of Chico 423

(Continued on next page)

*Time-
Dated
Material*

DECISION NOT TO PROCEED

BOARD OF PRISON TERMS
Decision Review Period 423

DEPARTMENT OF CONSERVATION—DIVISION OF RECYCLING
Persons Importing Beverage Container Material 424

DISAPPROVAL DECISIONS

VETERINARY MEDICAL BOARD 424

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State 424

Sections Filed, October 10, 2001 to February 13, 2002..... 427

OAL REGULATORY DETERMINATIONS

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT [2002 OAL Determination No. 1]
Procedure for Prioritizing Candidate Chemicals for Consideration Under Proposition 65 by the
“State’s Qualified Experts” 432

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to adopt the following in Title 3 of the California Code of Regulations:

- Section 2042, Article 3, Subchapter 2, Chapter 3, which concerns allocation of payments between bulk milk purchased and other items purchased; and
- Section 2100, Article 1, Subchapter 4, Chapter 3, which concerns eligibility for coverage under the Milk Producers Security Trust Fund and how a beneficial ownership interest is determined.
- Section 2150, Article 2, Subchapter 4, Chapter 3, which concerns the calculation of Trust Fund obligations to producers.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interest person, may adopt the proposal substantially as set forth without further notice.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Greg Lawley, Department of Food and Agriculture, Dairy Marketing Branch, 1220 N Street, Room A-202, Sacramento, CA, 95814. Written comments must be received no later than 5:00 p.m.

Monday, April 8, 2002. Written comments may also be sent to Greg Lawley via electronic mail at glawley@cdfa.ca.gov; or via FAX (916) 654-0867.

CONTACT PERSON

Inquiries concerning this action may be directed to Greg Lawley at (916) 654-1456. The backup contact person is Mary Riley, at the same number.

AUTHORITY AND REFERENCE

Food and Agricultural Code (FAC) Section 407 authorizes the Department to adopt the proposed regulations, which would implement, interpret, or make specific sections 62185, 62190, 62501, 62623, 62580, 62587, and 62624 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Food and Agricultural Code Section 62185 provides that when a milk handler fails to pay dairy producers as required, the Department shall obtain information sufficient to determine the amount owed to each producer. FAC Section 62190 provides that for purposes of action on a bond, payments shall be applied with credit first to interest and then to principal. FAC Section 62623 states how amounts owed to producers shall be calculated when a claim is made against the Milk Producers Security Trust Fund.

Section 2042 will specify how payments will be allocated between bulk milk purchased and other items. The purpose of Section 2042 of the proposed regulations is to specify how handler payments to producers for bulk milk purchases shall be applied to amounts owed and in the event of a claim against the Trust Fund, how handler payments will be applied to the oldest amount due first, then successively, to the next oldest amount due, etc.

FAC Section 62580 lists the criteria required for a producer to be considered for coverage under the Milk Producers Security Trust Fund. This includes the requirement that the producer does not have a beneficial ownership interest in the handler to whom shipments were made. FAC Section 62587 allows the Department to waive any of the provisions of Article 5, Milk Producers Security Trust Fund, if it finds that a hardship would be imposed on persons which is not consistent with the intent of the chapter.

Section 2100 will define what is meant by "beneficial ownership interest" and explain how it will be determined in various types of business ownership arrangements. FAC Section 62580 states that producers who have a beneficial ownership interest in the handler to whom they ship their milk are not eligible to have their shipments covered under the provisions of the Milk Producers Security Trust Fund. The proposed regulations define nine different pos-

sible business relationships, and identify what shall and shall not be considered to be a beneficial ownership interest.

FAC Section 62623 states the guidelines for calculating Trust Fund payments to producers, Section 62624 states the amount that shall be deducted from the claims of producers, and provides that the balance shall be paid from the Trust Fund on a pro rata basis.

Section 2150 will specify and clarify how Trust Fund claim amounts will be determined and calculated. It will explain the sequence and steps followed in the calculation, and will state that only *eligible* milk will be used as the basis for calculation and pro ration of the amounts owed each producer.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following determinations

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The initial determination is that there is no statewide adverse economic impact.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The adopting of the subject regulations does not require a report.
- Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(12), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the

attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

David Ikari, Branch Chief, or
Greg Lawley, Supervising Auditor
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street, Room A-224
Sacramento, CA 95814
Telephone: (916) 654-1456 or CALNET 464-1456

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any or other information upon which the rulemaking is based to:

Jackie Juarez
Dairy Marketing Branch
Department of Food and Agriculture
1220 N Street, Room A-202
Sacramento, CA 95814
Telephone: (916) 654-1456 CNET 464-1456

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. The text of proposed regulations and initial statement of reasons are also available on the Internet, at www.cdffa.ca.gov/dairy. When the final statement of reasons has been prepared, it will also be available at this website. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Jackie Juarez at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly

indicated, available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Jackie Juarez at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

High School Equivalency Certificate (GED)

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Board proposes to amend Sections 11530 and 11531 of Article 2, Subchapter 8, Chapter 11, Division 1 of Title 5 of the California Code of Regulations, providing guidance on administration of the General Educational Development (GED) examinations.

PUBLIC HEARING

The State Board will hold a public hearing starting at 11:00 a.m. on Thursday, April 25, 2002, at 721 Capitol Mall, Room 166. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the agency of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Board. All written comments must be received no later than the close of the public hearing scheduled to start at 11:00 a.m. on April 25, 2002. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 552
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4669
FAX number: (916) 657-3844
E-mail: pmcginni@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for these regulations is found in Education Code section 51426, which states that the State Board shall adopt rules and regulations necessary to implement Article 3 of Chapter 3 of Part 28, Division 4, Title 2.

The references for the proposed regulations are Education Code sections 51420, 51421 and 51425.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

California Education Code sections 51420 through 51427 establish the legal framework for administration of the General Educational Development (GED) examinations and the awarding of a California High School Equivalency Certificate. Originally intended for military personnel, GED tests have been administered in the United States and California since 1942 by the GED Testing Service (GEDTS), a division of the national not-for-profit American Council on Education. GEDTS develops and norms the GED tests, develops national policy guidelines, and contracts with agencies to administer the testing program. The Standards and Assessment Division of the California Department of Education (CDE) is responsible for administration of the program in California. CDE contracts with local GED testing centers and supervises the centers in cooperation with GEDTS. In 2000, 55,358 Californians took the GED exam.

Beginning in January of 2002, GEDTS will start a new series of GED exams with entirely new test items. Individuals with partial scores on the pre-2002 GED exams must complete the GED exam before December 31, 2001. The new GED exam will be based on a different scale than the old test and cover significantly different content. Also beginning in 2002, GEDTS is requiring centralized scoring of all GED exams, which were previously scored by local testing centers, with the exception of the essay portion of the test and tests taken in Spanish. The existing regulations need to be amended to bring administration of the GED in California into alignment with the new policies of the American Council on Education

The proposed amendments to the GED regulations implement the new GEDTS policies and procedures. Specifically, the proposed amendments change the definition of passing scores, clarify the meaning of several terms consistent with the new GEDTS procedures, and make minor technical corrections. The regulations will provide guidance to local testing centers on administering the new GED exams, reporting and interpreting scores, and determining examination fees.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Business: The State Board has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The State Board has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: None, because these regulations implement the new GED examinations and do not affect the business operations of small businesses administering GED examinations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The purpose of the proposed regulations is to provide guidance on the administration of the General Educational Development (GED) examinations. The State Board does not believe that existing law absent these regulations achieves that objective. Moreover, the State Board has been unable to identify any alternative to the proposed regulations that achieves the objective. The State Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

**ASSESSMENT REGARDING CREATION OR
ELIMINATION OF JOBS IN CALIFORNIA**

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Eric Zilber
Standards and Assessment Division
California Department of Education
721 Capitol Mall, Sixth Floor
P. O. Box 944272
Sacramento, California 94244-2720
(916) 657-4543

Requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based should be directed to:

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 552
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4669
FAX number: (916) 657-3844

Or:

Janis Miller, Regulations Analyst
Telephone: (916) 657-2453
FAX number: (916) 657-3844

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Regulation Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulation Adoption Coordinator at the address or telephone number listed above or accessing the California Department of Education's website at <http://www.cde.ca.gov/regulations>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Audit Response Coordinator or viewed on the website.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing, the State Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the State Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of the Regulation Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which it is made available.

**TITLE 10. DEPARTMENT
OF CORPORATIONS****NOTICE IS HEREBY GIVEN**

The California Corporations Commissioner ("Commissioner") proposes to repeal Section 310.100.1 of the California Code of Regulations (10 C.C.R. Section 310.100.1) under the FRANCHISE INVESTMENT LAW relating to the exemption from registration for offers or sales to person who are not residents of California, if certain conditions are met.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., April 8, 2002. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax at (916) 322-5875.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The Department regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been

registered with the Commissioner or is exempt from registration. The FIL and its rules provide several exemptions from registration.

Rule 310.100.1 provides an exemption from registration for offers or sales to persons who are not residents of California, if certain conditions are met. Specifically, this exemption would be available if (1) the offer or sale is made to a resident of a foreign state, territory or country, (2) the person is neither domiciled in this state to the knowledge of the seller nor actually present in this state, (3) the franchised business is not to be operated, wholly or partially, in this state, and (4) the sale of such franchise is not in violation of any law of the foreign state, territory or country concerned or of the United States.

Assembly Bill 3061 (Chapter 477, Statutes of 1996), which became effective on January 1, 1997, added Section 31105 of the Corporations Code under the FIL to provide an exemption from the registration requirements for an offer, sale or transfer of a franchise to a resident of another state or country if all locations from which sales, leases or other transactions between the franchised business and its customers are made, or goods or services are distributed, are physically located outside this state.

The Commissioner proposes to repeal Rule 310.100.1. Since an exemption from registration for the offer or sale of franchises to non-California residents has been codified in statute through the enactment of Corporations Code Section 31105, Rule 310.100.1 is duplicative and therefore no longer necessary. Furthermore, this change is necessary to eliminate confusion and contradictory law as Rule 310.100.1 includes additional requirements that the exemption under Corporations Code Section 31105 no longer requires.

AUTHORITY

Sections 31100 and 31502, Corporations Code.

REFERENCE

Sections 31100, 31110, 31111, 31112, 31113, 31114, 31115, 31116, 31117, 31118, 31119, 31120, 31121, 31122, 31123, 31124 and 31125, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only nonsubstantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made

available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 04/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 04/01-C. These documents are also available at the Department's website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Cost or Savings to Local Agency or School District, or a Mandate Which Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; and (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because the proposed action merely removes a redundant, and therefore unnecessary, rule that has already been codified in statute.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Gerardo Partida, Senior Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 322-3553.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION:

ADD COMMISSION REGULATION 1081 (a)(33) MINIMUM STANDARDS FOR RACIAL PROFILING TRAINING

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST), pursuant to authority vested by Section 13503 of the Penal

Code (powers of the Commission on POST) and Section 13506 (authority for the Commission on POST to adopt regulations), and in order to interpret, implement and make specific Sections 13510 (authority of the Commission on POST to adopt and amend rules establishing minimum standards for California local law enforcement officers), and Section 13519.4 of the Penal Code which gives the Commission on POST the authority to develop a course of instruction for the training of law enforcement officers in California racial profiling, proposes to adopt a regulation in Chapter 2 of Title 11 of the California Code of Regulations. A public hearing to adopt the proposed regulation will be held before the full Commission on:

Date: April 11, 2002 **Place:** Ramada Plaza
Time: 10:00 a.m. 6333 Bristol Parkway
 Culver City, CA 90230

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill 1102, which amended Section 13519.4 of the Penal Code requires the Commission on Peace Officer Standards and Training to develop an initial training course on racial profiling, which is required of all law enforcement officers. A four-hour minimum curriculum is proposed to meet this requirement that must be completed by July 1, 2004. As part of the change in law, officers are required to complete a refresher course every five years after completing the initial training course. A two-hour minimum course curriculum is proposed to meet this requirement. It is proposed that officers completing the basic course after July 1, 2003 will satisfy the initial racial profiling requirement as this curriculum will be part of the basic course.

As required by Penal Code Section 13519.4, POST collaborated with a five-member Governor/Legislatively appointed panel along with subject matter experts from law enforcement and training organizations. The highly student interactive, instructional methodology was developed in accordance with the provisions of Section 13519.4(h). This section specifies that the course content will address certain topics. This was accomplished by including them in proposed course topics or videos that will be used by course instructors and facilitators.

The four-hour proposed initial training curriculum includes—Why Are We Here, Racial Profiling Defined, Legal Considerations, History of Civil Rights, Impact of Racial Profiling, Community Considerations, and Ethical Considerations.

The two-hour proposed refresher training curriculum includes—Review of Applicable Initial Training and Update on Changes in Law and Practices.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than April 8, 2002. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, fax number (916) 227-2801, or email at kobrien@post.ca.gov.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date of which the revised text is made available.

TEXT OF PROPOSAL

Copies of the Initial Statement of Reasons and exact language of the proposed action may be obtained by submitting a request in writing to the contact person at the address below. This address also is the location of all information considered as the basis for these proposals. The information will be maintained for inspection during the Commission's normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday).

Copies of the Final Statement of Reasons, once it has been prepared pursuant to subdivision (a) of Section 11346.9, may be obtained from the address at the end of this notice.

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Saving in Federal Funding to the State: There will be training costs to state agencies that employ law enforcement officers. Training costs will include costs associated with instruction, trainee salaries, trainee travel, and per diem.

Nondiscretionary Costs/Savings to Local Agencies: None that are reimbursable by the state because the training mandate is upon individual peace officers.

Local Mandate: No. This is a training mandate upon individual officers.

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None that are reimbursable by the state because the training mandate is upon individual peace officers.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, Including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with business in other states, and has found that the proposed addition of Regulation 1081(a)(33) will have no affect on California business, including small businesses, because the Commission on Peace Officer Standards and Training sets selection and training standards for law enforcement and does not impact California business, including small businesses.

Cost Impacts on Representative Private Persons or Business: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no affect on housing costs.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

In order to take this action, the Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning written material pertaining to the proposed action should be directed to Leah Cherry, Associate Governmental Program Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by telephone at (916) 227-3891, fax number (916) 227-3895, or email at leah.cherry@post.ca.gov. The back-up contact person as well as inquiries concerning the substance of the

proposed action/text should be directed to Hal Snow, Assistant Executive Director, at (916) 227-2807, fax number (916) 227-2801, or e-mail at halsnow@post.ca.gov.

INTERNET ACCESS

The Commission has posted on its Internet Website (www.post.ca.gov) the information regarding this proposed regulatory action. Select "Regulation Notices" from the topics listed on the Website home page.

TITLE 13. CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

**TITLE 13, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2
AMEND CHAPTER 6.5, ARTICLE 8,
SECTION 1270**

MOTOR CARRIER SAFETY GENERAL EQUIPMENT REQUIREMENTS—SEATS (CHP-R-2001-09)

The California Highway Patrol (CHP) proposes to amend regulations in Title 13, California Code of Regulations (13 CCR), relating to bus driver's seat adjustability.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 13 CCR, Chapter 6.5, Article 8 sets forth general equipment requirements for commercial vehicles. The CHP proposes to amend Section 1270 of that article by revising the requirements for driver's seats on buses.

Current safety regulations require that the driver's seat in a Type 1 bus (designed for carrying more than 16 passengers and the driver) be readily adjustable, both backward and forward, and up and down, independently of each other. The Department has become aware that some Type 1 buses are now equipped with drivers' seats that adjust backward and forward, and up and down, but not necessarily independently of each other. The Department's intent in originally adopting this requirement was to assure some seat adjustability so that drivers of varying physical stature could adequately access the driver's controls. However, it is not the Department's intent to require driver's seat adjustability beyond that provided by the original manufacturer of the bus, but merely to assure that the bus seat is maintained by the bus owner in such a manner that the degree of adjustability provided by the original manufacturer is retained. Therefore, the Department is proposing to clarify this requirement by continuing to require that the driver's

seat be adjustable backward and forward, but to permit that upward and downward adjustability be either independent or incorporated into the forward and backward adjustability.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

California Highway Patrol
Enforcement Services Division
ATTN.: Mr. Jack Schwendener
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 4:45 p.m., April 8, 2002.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Enforcement Services Division no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The Department has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the foregoing address, by facsimile at (916) 446-4579 or by calling the Commercial Vehicle Section at (916) 445-1865.

All requests for information should include the following information: The title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection at the California Highway Patrol, Commercial Vehicle Section, 444 North Third Street, Sacramento, California. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our web site.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or questions regarding the substance of the proposed regulations

should be directed to Mr. Jack Schwendener or Mr. Gary Ritz, CHP, Commercial Vehicle Section at (916) 445-1865.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The California Highway Patrol has determined that the proposed regulatory action may affect small businesses.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the Department may adopt the proposals substantially as set forth without further notice. If the proposal is modified prior to adoption and the changes are not solely grammatical or nonsubstantial in nature, the full text of the resulting regulations, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the California Highway Patrol must determine that no reasonable alternative considered by the California Highway Patrol, or that has otherwise been identified and brought to the attention of the California Highway Patrol, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites inter-

ested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Vehicle Code Sections 31401, 34501, and 34501.5.

REFERENCE

This action implements, interprets, or makes specific Vehicle Code Sections 31400, 31401, 34501, and 34501.5.

TITLE 15. BOARD OF PRISON TERMS

NOTICE OF PROPOSED REGULATORY ACTION [RN 02-01]

SUBJECT: Witness and Subpoena Regulations; Review of Violation Reports; Purging of Warrants

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend sections 2000, 2465, 2640, 2643, 2666, 2668, 2676, 2677, 2678, and 2714 of Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY

These regulations are submitted pursuant to the Board's authority under Penal Code sections 3041, 3052 and 5076.2.

REFERENCE

These regulations are amended to implement, interpret, and/or make specific, Penal Code sections 3041, 3052, 5076.2 and 5076.3.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. *The written comment period on the proposed regulations will close at 5:00 p.m., on April 12, 2002.* All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile No.: (916) 322-3475
E-mail: regcomment@bpt.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code section 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison.

Penal Code section 5076.3 gives the Board the authority to adopt regulations on the policies and guidelines for the issuance of subpoenas.

This regulatory action is designed to provide clarification of the parole revocation and revocation extension process. Additionally, these amendments are designed to make the regulatory language in the proposed changes more precise and consistent with the law and current practice. Existing law provides the Board of Prison Terms (BPT) with authority under Penal Code sections 3057(a) and 3060 to suspend or revoke any parole, or extend and order any prisoner returned to prison for up to 12 months. This action is designed to promulgate BPT policy pursuant to the Administrative Procedure Act.

These proposed regulatory amendments are necessary to: 1) more accurately reflect witnesses and their purpose in parole revocation and revocation extension proceedings; 2) clarify use and service of subpoenas; 3) clarify review of National Crime Information Center (NCIC) warrants; 4) modify the time frames for staff review of parole violation reports; and 5) to ensure clarity and consistency of the applicable regulatory language.

Proposed amendments to California Code of Regulations (CCR) section 2000 will add the definitions—evidentiary witness and dispositional witness to the list of definitions, replacing the former definitions—adverse witness and friendly witness.

Proposed amendments to CCR section 2465 will provide a clearer description of the type of witnesses requested at rescission hearings.

Proposed amendments to CCR section 2640 will update the Board's regulations to conform to California Department of Corrections' regulations concerning time frames for review of violation reports.

Proposed amendments to CCR section 2643 will clarify the type of witnesses utilized in parole revocation hearings—evidentiary witnesses will be

utilized in the fact finding or evidentiary phase of the hearing; and dispositional witnesses will be utilized for general purposes—ordinarily by means of written statements, letters, or affidavits.

A proposed amendment to CCR section 2666 is necessary to remedy a typographical printing error—omitting the word “not” to clarify that any information from a prisoner or parolee “shall be made available to the hearing panel.”

Proposed amendments to CCR section 2668 set out the role of witnesses utilized in parole revocation hearings, placing them in the order in which they appear at hearings.

Proposed amendments to CCR section 2676 set out more clearly who may request a subpoena/subpoena duces tecum prior to parole revocation and rescission hearings and to clarify the proper procedure for implementing a subpoena duces tecum.

Proposed amendments to CCR section 2677 clarify under what circumstances a subpoena will be issued to compel the attendance of a witness at a hearing.

Proposed amendments to CCR section 2678 will clarify the methods of service of subpoenas as outlined in the Government Code and Penal Code.

Proposed amendments to CCR section 2714 will specify the requirements of the National Crime Identification Center (NCIC)—that warrants posted in the system be reviewed every five years.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendment to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

CONTACT PERSON

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 “K” Street, Sixth Floor
Sacramento, CA 95814
(916) 445-5277

In any such inquiries, please identify the action by using the **Board’s regulation control number RN 02-01**.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Pearl McGuire, 324-9895**.

Questions on the substance of the proposed regulatory action may be directed to: **John Winn, Chief Counsel, 322-6279**.

Website Access: Materials regarding this proposal can be accessed from the Board’s website at: www.bpt.ca.gov.

AVAILABILITY OF THE INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATIONS

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's Internet Home Page at (www.bpt.ca.gov).

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person, and also by fax, or e-mail.

AVAILABILITY OF CHANGES TO
PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**TITLE 16. BUREAU OF
AUTOMOTIVE REPAIR**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

Southern California

April 10, 2002, 10:00 a.m.

Bureau of Automotive Repair
1180 Durfee Avenue, Suite 120
Conference/Training Room
South El Monte, CA 91733

and

Northern California

April 12, 2002, 10:00 a.m.

Department of Consumer Affairs
10240 Systems Parkway
Executive Conference Room
Sacramento, CA 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on April 12, 2002, or must be received by the Bureau at the above referenced hearings. The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 9882 of the Business and Professions Code and Sections 44001.5, 44002, 44012 and 44013 of the Health and Safety Code, and to implement, interpret or make specific Sections 9884.8 and 9884.9 of the Business and Professions Code and Sections 44003, 44010, 44010.5, 44012, 44014, 44014.7, 44015, 44017, 44017.1, 44033, 44036, and 44037.1 of the Health and Safety Code, the Bureau is considering changes to Division 33 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The Bureau of Automotive Repair (Bureau), located within the Department of Consumer Affairs, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the Bureau licenses smog check stations and technicians and certifies inspection equipment.

Mobile source emissions reductions are achieved when high-emitting vehicles are identified and then repaired. If high-emitting vehicles are not identified and repaired, the effectiveness of the Program is greatly diminished.

I. Background:

Historically, most of the focus of the Program has been on vehicular tailpipe emissions. In the past few years, however, it has been recognized that gasoline vapors that evaporate from vehicle gasoline tanks and carburetor bowls contribute significantly to the formation of photochemical smog. These evaporative emissions occur even when the vehicle is not operating. Given most of California's climate, high temperatures can cause a significant amount of hydrocarbon emissions.

Consequently, in the 1970s, vehicle manufacturers began installing fuel evaporation control systems on gasoline-powered motor vehicles. These systems primarily consisted of liquid-vapor separator mounted near the vehicle's fuel tank, a sealed gas cap, a charcoal canister to store the gasoline vapors, and related hoses and valves. While the vehicle is inoperative, the canister stores the vapors. Once the vehicle becomes operative, the vapors are sent to the engine where they are burned.

These systems must be free of leaks if they are to effectively reduce evaporative emissions. If leaks are present, vapors will not be burned, but rather will escape into the atmosphere. Prior to these proposed regulations, smog check technicians were required to give the vehicle's fuel evaporation control system a visual inspection. However, there is no guarantee that passing these tests means that the entire system is airtight.

If the fuel evaporation system is not airtight, the system's efficacy is severely compromised. Vapors from the fuel tank will be released into the atmosphere, and when the system purges, ambient air, instead of gasoline vapors, will be sent to the engine to be burned. Studies have shown that 20% of automotive hydrocarbon emissions may be traced to evaporative sources such as the fuel tank or carburetor float bowls.

II. Program Improvements:

In the middle of 2000, the California Air Resources Board (ARB) released a report on the effectiveness of the Program. ARB's report indicates that while the current Program is reducing a significant amount of motor vehicle emissions, improvements to the Program must be made if California is to meet federal air quality standards. For example, California's 1995 State Implementation Plan—the blueprint submitted to the United States Environmental Protection Agency that explains how the state will achieve compliance—claimed an emissions reduction of 112 tons per day (tpd) for the Program. ARB's report found that the emissions reductions associated with the Program are closer to 65 tpd, indicating that improvements are needed.

In a joint letter to the USEPA explaining how the shortfall could be eliminated, the Bureau and ARB asserted that near-term improvements to the Smog Check Program would result in a statewide emission reduction of almost 14 tpd by 2002. By 2005, the benefit increases to almost 22 tpd, and in 2008, the benefit reaches its maximum projected value of 24.1 tpd.

The proposed improvements include: more stringent emission cut-points, loaded-mode testing for heavy-duty trucks, a remote sensing component, improved evaporative testing, and more vehicles directed to test-only stations. Of course, long-term changes to the Program are also necessary, but such changes are outside the scope of these proposed regulations.

From many perspectives, achieving compliance with the federal air quality standards is vitally important to California. The federal government may withhold highway trust funds or impose other sanctions on the state, including the implementation of a federally designed Smog Check Program. Noncompliance has already triggered a Notice of Intent to sue California and a third-party lawsuit against local metropolitan planning agencies, which rely on the emission reductions of the Program to acquire approval and funding for local transportation improvement projects.

This regulatory proposal would require smog check technicians to perform a low-pressure test of a vehicle's fuel evaporative system using an automated tester certified by BAR. In addition, if the evaporative system fails the pressure test, the vehicle fails the smog check inspection. The Bureau estimates that the addition of the low-pressure test will reduce hydrocarbon emissions by 3.5 tpd.

Current Regulation:

Section 3340.16.7 of Title 16 of the California Code of Regulations requires that smog check technicians perform a pressure check of the vehicle's gas cap. If the gas cap does not hold pressure for a specified amount of time, it fails the test, and the vehicle fails the inspection. Likewise, Section 3340.16.7 requires smog check technicians to perform a visual inspection of the fuel evaporation system to ensure that it is not tampered or otherwise defective. Section 3340.42 currently requires a visual inspection of the vehicle for liquid fuel leaks, but there is no current functional test of a vehicle's fuel evaporative system.

Effect of Regulatory Action:

This regulatory action, by amending Section 3340.42, makes the following changes to the Smog Check Program:

1. Requires licensed smog check stations to purchase a low-pressure fuel evaporative tester that has been certified by BAR;

2. Beginning July 1, 2002, requires smog check technicians to perform a low-pressure test of a vehicle's fuel evaporation control system using procedures established in this regulation.
3. Specifies the vehicles that are exempt from the pressure test.
4. Specifies that repairs to correct faulty fuel evaporation systems may be subsidized under the Bureau's Consumer Assistance Program and/or will count toward the repair cost minimum to obtain a temporary waiver.
5. Provides that the low-pressure fuel evaporative test does not supplant the liquid leak inspection and the visual inspection of the fuel evaporation system.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The Bureau has made an initial determination that the adoption of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

The following types of businesses would be affected:

1. Smog Check Test-and-Repair Stations
2. Smog Check Test-Only Stations
3. Equipment Manufacturers

The following reporting, recordkeeping or other compliance requirements are projected to result from the proposed action:

1. Licensed Smog Check stations will be required to purchase, maintain and use a low-pressure fuel evaporative systems tester.
2. Smog Technicians would have to record on the Vehicle Inspection Reports the circumstances that prevent a pressure test from being performed.

The Bureau has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit such proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony and/or other evidence that supports this determination.

Impact on Jobs/New Businesses:

The Bureau of Automotive Repair has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Bureau of Automotive Repair estimates that private individuals or entities could be affected by these regulations since the addition of the low-pressure fuel evaporative test will lead to more inspection failures and stations may increase the price of a smog check inspection to recoup the cost of the tester and the additional time (approximately 10 minutes) that it will take to perform this test, as an additional component of the Smog Check inspection. Consequently, consumers will be forced to make repairs themselves and/or have repairs made on their vehicles.

Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and of the statement of reasons, and all of the information upon which the proposal is based, may

be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, CA 95827.

**AVAILABILITY AND LOCATION OF THE
RULEMAKING FILE AND THE FINAL
STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the Bureau of Automotive Repair at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

James Allen, Regulations Analyst
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: jim_allen@dca.ca.gov

The backup contact person is:

Debbie Romani, Staff Services Manager
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: debbie_romani@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Kurt Heppler in the Bureau's Engineering Division at (916) 255-1732.

WEBSITE ACCESS

Materials regarding this proposal can also be found on the Bureau's website at www.smogcheck.ca.gov.

**TITLE 16. STRUCTURAL PEST
CONTROL BOARD**

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (hereinafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Sheraton Pasadena Hotel, 303 East Cordova Street, Pasadena, California, at 9:00 a.m. on April 12, 2002. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in

this Notice, must be received by the Structural Pest Control Board at its office not later than 5:00 p.m. on April 11, 2002, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 8525 of the Business and Professions Code, and to implement, interpret or make specific Sections 8564.6, 8593.1 and 8674 of said Code, the Board is considering changes to Division 19 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Amend 1948

Business and Professions Code section 8564.6 requires that an applicant for an applicator's license submit a prescribed fee. Code section 8674 sets forth the fees imposed for the issuance of an applicator's license and the renewal of an applicator's license. There is no existing regulation to specify the fee for the applicator's license or applicator's license renewal.

This regulatory proposal would set the fees for an applicator's license and an applicator's license renewal.

Amend 1950

Business and Professions Code section 8593.1 requires as a condition to the renewal of an applicator's license that the licensee submit proof satisfactory to the board that he or she has completed continuing education courses. There is no existing regulation to establish the specific continuing education renewal requirements.

This regulatory proposal would specify the exact continuing education requirement for licensed applicators.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Structural Pest Control Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Structural Pest Control Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Structural Pest Control Board at 1418 Howe Avenue, Suite 18, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Delores Coleman
Structural Pest Control Board
1418 Howe Avenue, Suite 18
Sacramento, CA 95825

Telephone No.: (916) 561-8700
Fax No.: (916) 263-2469
E-Mail Address: delores_coleman@dca.ca.gov

The backup contact person is:

Susan Saylor
Structural Pest Control Board
1418 Howe Avenue, Suite 18
Sacramento, CA 95825

Telephone No.: (916) 561-8700
Fax No.: (916) 263-2469
E-Mail Address: susan_saylor@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Susan Saylor, (916) 561-8700.

Website Access: Materials regarding this proposal can be found at www.pestboard.ca.gov.

NOTE: THE FOLLOWING NOTICE OF PROPOSED REGULATORY ACTION IS BEING PUBLISHED PURSUANT TO GOVERNMENT CODE SECTION 11356(b) AND HAS NOT BEEN REVIEWED BY OAL FOR COMPLIANCE WITH ARTICLE 5 (COMMENCING WITH SECTION 11346) OF CHAPTER 3.5 OF PART 1 OF DIVISION 3 OF TITLE 2 OF THE GOVERNMENT CODE. PURSUANT TO HEALTH AND SAFETY CODE SECTION 18935, THE BUILDING STANDARDS COMMISSION IS REQUIRED TO REVIEW THE NOTICE FOR STATUTORY COMPLIANCE WITH ARTICLE 5 AND SUBMIT IT TO OAL FOR THE SOLE PURPOSE OF INCLUSION IN THE CALIFORNIA REGULATORY NOTICE REGISTER.

TITLE 24. CALIFORNIA ENERGY COMMISSION

NOTICE OF PROPOSED ACTION

CONSIDERATION OF POTENTIAL AMENDMENTS TO BUILDING ENERGY EFFICIENCY STANDARDS CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 6 Docket No. 02-BSTD-1

PUBLIC HEARINGS

The Commission's Energy Efficiency Committee will be holding a public hearing on the following date to receive public comment on possible limited amendments (see Express Terms) to the Building Energy Efficiency Standards in response to a petition for rulemaking submitted by Tyco Adhesives:

Thursday, March 21, 2002
10 a.m.

CALIFORNIA ENERGY COMMISSION
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair Accessible)

The Energy Efficiency Committee may hold another hearing after that date if it deems necessary. The hearing before the full Commission for final adoption of 45-Day Language will be held on the following date unless the Commission decides to make substantive changes to the Express Terms through 15-Day Language, in which case the public hearing will be continued to a later noticed date.

Wednesday, April 17, 2002
10 a.m.

CALIFORNIA ENERGY COMMISSION
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair Accessible)

If the Commission decides to propose 15-Day Language modifications to the Express Terms, separate notice of the adoption hearing for the 15-Day Language will be provided.

RESPONSE TO TYCO'S PETITION

In response to a petition for rulemaking filed by Tyco Adhesives and Shurtape Technologies, Inc. ("Tyco"), the California Energy Commission is opening a rulemaking proceeding to consider limited amendments to the Building Energy Efficiency Standards (Title 24, Part 6). These amendments are proposed pursuant to the legislative authorities in Public Resources Code Section 25402, and implement the provisions of that statute.

The petition for rulemaking requested that the Commission repeal and/or delay the effective date of building energy efficiency standards in the California Code of Regulations, Title 24, Part 6, Sections 124(b)1.D., 124(b)2.D., 150(m)2.D. and 150(m)3.D. These regulations allow the use of cloth back rubber adhesive duct tape (duct tape) for sealing ducts only if installed in combination with mastic.

The requirements Tyco seeks to repeal are a part of the regulations adopted by emergency pursuant to AB 970 in January, 2001. These regulations were subsequently readopted and made permanent in April, 2001. The regulations went into effect for nonresidential buildings and some residences on June 1, 2001. They went into effect for the remaining residential buildings on January 1, 2002.

Tyco raised concerns with the duct tape requirements late in the rulemaking that made the regulations permanent, and was subsequently provided with an additional hearing on June 14, 2001, to further elaborate on their concerns.

The Commission's Energy Efficiency Committee believes there may be value in reopening these issues for further public discussion. In granting the petition, the Commission took no position on the substantive merits of Tyco's petition.

INFORMATIVE DIGEST / SCOPE OF THE RULEMAKING PROCEEDING

The Commission is required to adopt standards for energy efficiency in buildings (Public Resources Code §§ 25402 and 25402.1). These include standards for insulation, lighting, heating and cooling, water heating equipment and components, and other building design and construction features.

Since the mid-1990s the Commission has recognized the severe energy and peak demand problems caused by badly designed, sealed and installed heating, ventilation and air conditioning (HVAC) system ducts. In 1998 the Commission took a first step to address these problems in its performance standards by giving compliance credit for duct efficiency improvement, in particular for pressure-tested and field verified ducts that are sealed using long-lasting sealant products.

In 2000 the Legislature enacted AB 970, requiring the Commission to adopt new measures in the building energy efficiency standards to reduce electric peak load to respond to the State's electricity crisis. The Commission adopted several new requirements, among them are requirements that do not allow cloth-back rubber adhesive duct tape for the connecting of joints in HVAC system ducts unless such tape is used in combination with mastic. It is this provision that Tyco has petitioned to repeal or amend, so that cloth-back rubber adhesive duct tape alone can be used on duct joints, without the use of mastic

FEDERAL STANDARDS

There are no applicable federal standards.

MANDATE ON STATE AND LOCAL AGENCIES—COSTS TO SCHOOL DISTRICTS

The Commission makes an initial determination that the amendments under consideration in this rulemaking proceeding will not impose any mandate on state or local agencies or school districts, nor will they result in significant costs or savings to school districts or state agencies. There are no other non-discretionary costs or savings to local agencies or state agencies. There will be no direct or indirect costs or savings in federal funding to the state.

ECONOMIC IMPACT

The Commission makes an initial determination that the amendments under consideration will not result in a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. If adopted, the proposed amendments will result in a relaxation of the stringency of regulations for duct construction, and a limited reduction in the energy efficiency of buildings. This relaxation would, at worst, return the State to the status quo as it existed prior to the effective date of the amendments that were adopted in 2001.

COST IMPACT STATEMENT—TO BUSINESS AND PRIVATE PERSONS

The Commission makes an initial determination that the amendments under consideration will not have a significant statewide adverse economic impact to individuals and businesses. The amendments in the Express Terms may cause a minor reduction in initial costs and a limited increase in energy costs. The Commission is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the Express Terms.

IMPACT ON JOB CREATION

The Commission makes an initial assessment on whether and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California: new jobs would not be created as a result of the amendments under consideration.
- The creation of new businesses or the elimination of existing businesses within the State of California: new businesses would not be created nor existing businesses eliminated as a result of the amendments under consideration.
- The expansion of businesses currently doing business with the State of California: the amendments

under consideration would not result in the expansion of businesses currently doing business with the State of California.

The Commission does not believe that the amendments under consideration in this rulemaking will have a significant impact on job creation.

HOUSING COST STATEMENT

The Commission makes an initial determination that the amendments under consideration in this rulemaking proceeding will not have a significant effect on housing cost. The amendments in the Express Terms may cause a minor reduction in initial costs and a limited increase in energy costs.

SMALL BUSINESS IMPACT

The Commission does not believe the amendments under consideration in this rulemaking will have a significant impact on small businesses.

CONSIDERATION OF ALTERNATIVE PROPOSALS

The Commission will consider alternatives to the amendments under consideration based on public comment. The Commission will determine that no reasonable alternative considered by the Commission or brought to the attention of the Commission would be more effective in carrying out the purpose of the Express Terms under consideration or would be as effective and less burdensome to affected parties. If other alternatives are deemed by the Commission to be more effective, the Commission will propose and adopt those alternatives through 15 Day Language.

CONTACT FOR SUBSTANCE QUESTIONS

Persons requesting technical information on the nature and scope of the rulemaking proceeding and potential amendments that the Commission will consider should contact:

Bill Pennington
Project Manager
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS-28
Sacramento, CA 95814
(916) 654-5013
email: bpenning@energy.state.ca.us

If Mr. Pennington should be unavailable, contact:

Elaine Hebert
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street, MS-25
Sacramento, CA 95814
(916) 654-4800
email: ehebert@energy.state.ca.us

**WRITTEN COMMENT PERIOD / AVAILABILITY
OF DOCUMENTS / CONTACT PERSONS**

This rulemaking proceeding is scheduled to start with the publication of this Notice of Proposed Action (NOPA) by February 22, 2002. Any interested person may comment, either orally or in writing, until the adoption hearing scheduled April 17, 2002, or up to the date of final adoption, if it is later. Please submit written comments to dockets at:

CALIFORNIA ENERGY COMMISSION

Attention: Docket No. 02-BSTD-1

Dockets Office

1516 Ninth Street, MS-4

Sacramento, CA 95814

Comments may also be filed electronically by emailing them to : bpennington@energy.state.ca.us or FAXing them to (916) 654-4304.

The Commission has prepared an Initial Statement of Reasons (ISOR). Interested persons may request, from the agency contact person listed below, copies of the ISOR, the Express Terms, or other materials related to this rulemaking by calling, FAXing, emailing or writing to:

Debbie Friese

CALIFORNIA ENERGY COMMISSION

Residential Buildings and Appliances Office

1516 Ninth Street, MS-25

Sacramento, CA 95814

(916) 654-4066

email: dfriese@energy.state.ca.us

FAX: (916) 654-4304

For assistance in participating in the rulemaking proceeding, please contact the Commission's Public Adviser, Roberta Mendonca, at (916) 654-4489, toll free (800) 822-6228, or by e-mail at pao@energy.state.ca.us.

**POST-HEARING MODIFICATIONS TO THE
TEXT OF THE REGULATIONS**

Interested persons should be aware that any of the provisions of the amendments under consideration by the Commission could be substantively changed as a result of public comment, staff recommendation or conclusions of the Commission's Energy Efficiency Committee. Also, additional language not indicated in the Express Terms could be added if it is within the scope of the rulemaking proceeding. If the Commission makes substantive changes to the Express Terms, it will make the full text of the modified amendments available to the public at least 15 days before adoption, as required by Government Code Section 11346.8.

FINAL STATEMENT OF REASONS

If the amendments under consideration are adopted, the Commission will prepare a Final Statement of Reasons. This document will update the Initial

Statement of Reasons, and respond to public comments. This document can be obtained after the conclusion of the rulemaking by contacting Debbie Friese at (916) 654-4066 or by email at: dfriese@energy.state.ca.us.

WEBSITE INFORMATION

The Initial Statement of Reasons, Express Terms, this Notice, any 15-Day Language issued subsequently, and the Final Statement of Reasons can be accessed at the Commission's website at: www.energy.state.ca.gov/title24/ducttape/.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**HOUSEHOLD HAZARDOUS WASTE UNIT
STATE REGULATORY PROGRAMS DIVISION
PUBLIC NOTICE FOR VARIANCE ISSUANCE**

On January 31, 2002, the State Regulatory Programs Division of the Department of Toxic Substances Control (DTSC) issued a three-year conditionally exempt small quantity generator (CESQG) transportation and manifesting variance renewal to the City of Chico's household hazardous waste collection program. Authority for this action is contained in Health and Safety Code, section 25143. The variance authorizes The City of Chico's household hazardous waste collection facilities to accept and qualified small businesses to transport up to 100 kilograms (220 pounds/27 gallons) of hazardous waste at one time per month without meeting registered transporter or hazardous waste manifest requirements. Standards exempted are contained in Health and Safety Code, sections 25163 and 25160 respectively. Transported waste is shipped in accordance with federal Department of Transportation, California Highway Patrol, and California Vehicle Code requirements. For additional information contact Lee Halverson at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (510) 540-3894.

DECISION NOT TO PROCEED

BOARD OF PRISON TERMS

NOTICE OF DECISION NOT TO PROCEED

Pursuant to Government Code section 11347(a), in light of the recent amendment to Penal Code section 3041(b), the Board of Prison Terms hereby withdraws

its notice of proposed regulatory action No. 01-01, Decision Review Period, submitted to OAL on February 9, 2001, proposing amendments to Title 15, California Code of Regulations section 2041.

**DEPARTMENT OF CONSERVATION—
DIVISION OF RECYCLING**

Subject: Persons Importing Beverage Container Material Notice File Number Z-01-0612-01

The Department of Conservation (Department) has decided not to proceed with the Notice of Proposed Action for the Persons Importing Beverage Container Material Regulation File. We understand that publication of a notice under Section 11347 of the Government Code terminates the effect of the original Notice of Proposed Action published in the California Regulatory Notice Register on June 29, 2001. The Department will also publish this notice of a decision not to proceed with the Persons Importing Beverage Container Material Regulation File on our website.

DISAPPROVAL DECISIONS

**DECISIONS OF DISAPPROVAL OF
REGULATORY ACTIONS**

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are published in full in the California Code of Regulatory Decisions. You may request a copy of a decision by contacting Mike Ibold, Law Librarian at the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, California 95814-4339, (916) 323-8906—FAX (916) 323-6826. Please request by OAL file number.

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
OAL File No. 02-0108-05 SR**

CRAIG S. TARPENNING
Senior Staff Counsel

For: DAVID B. JUDSON
Deputy Director/Chief Counsel

In re:

VETERINARY MEDICAL BOARD

**REGULATORY ACTION: Title 16, California
Code of Regulations**

**ADOPT SECTION(S): 2085, 2085.1, 2085.2,
2085.3, 2085.4, 2085.5, 2085.6, 2085.7, 2085.8,
2085.9, 2085.10, 2085.11, 2085.12, & 2085.13**

AMEND SECTION(S): 2070

SUMMARY OF REGULATORY ACTION

This filing is a resubmittal of a regulatory action implementing section 4846.5 of the Business and Professions Code which, beginning January 1, 2002, imposed continuing education requirements for those persons licensed by the Veterinary Medical Board. On February 4, 2002, the Office of Administrative Law (OAL) approved Title 16 California Code of Regulations, sections 2085, 2085.1, 2085.2, 2085.3, 2085.5, 2085.6, 2085.7, 2085.8, 2085.9, 2085.10, 2085.11, 2085.12, 2085.13, and 2070 as meeting all applicable legal requirements. OAL at that time disapproved Title 16, California Code of Regulations, section 2085.4 for failure to comply with the “consistency” standard of Government Code section 11349.1.

DISCUSSION

On February 8, 2002, the Veterinary Medical Board resubmitted a revised section 2085.4 which contained nonsubstantive changes that remedied the “consistency” problem raised in the February 4, 2002 disapproval notice. On February 11, 2002, OAL approved and filed section 2085.4 of title 16 of the California Code of Regulations with the Secretary of State rendering a discussion here of the reason for the disapproval moot.

February 11, 2002

Original: Susan M. Geranen

Cc: Deanne Pearce

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BUREAU OF AUTOMOTIVE REPAIR
Automatic Transmission

This action updates the Bureau’s consumer protection rule defining terms and establishing minimum standards for the servicing of vehicle automatic transmissions.

Title 16
California Code of Regulations
AMEND: 3361.1

Filed 02/13/02
 Effective 03/15/02
 Agency Contact: James Allen (916) 255-4300

CALIFORNIA HORSE RACING BOARD
Colors and Number

This rulemaking action authorizes advertising on jockey attire, owner silks, and track saddlecloths during a horserace, establishes size and location requirements for advertisements, and requires a copy of the advertisement signage to be submitted for review, for compliance with the size and location requirements, to the stewards at the track where the advertisement will be worn before the horse is entered to race.

Title 4
 California Code of Regulations
 AMEND: 1691
 Filed 02/13/02
 Effective 02/13/02
 Agency Contact: Pat Noble (916) 263-6033

CALIFORNIA HORSE RACING BOARD
Test Sample Required

This action reduces the frequency of sampling of the blood and urine of horses required under the current regulation by increasing the minimum size of the purse necessary before the sampling of second and third place finishers is required, and decreasing the number of horses that must be tested.

Title 4
 California Code of Regulations
 AMEND: 1858
 Filed 02/06/02
 Effective 03/08/02
 Agency Contact: Harold Coburn (916) 263-6397

DEPARTMENT OF CHILD SUPPORT SERVICES
Location of Persons and Assets

This emergency readoption establishes the uniform forms, policies and procedures to be used statewide by all local child support agencies.

Title 22
 California Code of Regulations
 ADOPT: 110413, 110550, 113100, 113200, 113300
 REPEAL: 12-104.1, 12-104.432, 12-221
 Filed 02/11/02
 Effective 03/06/02
 Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF CORPORATIONS
Qualifying Requirements for Compensatory Benefit Plan

This Certification of Compliance amends provisions to comply with legislative changes which exempt compensatory benefit plans of limited liability compa-

nies from qualification under the Corporate Securities Act of 1968. (Previous OAL file ## 00-1219-09E, 01-0423-02EE, 01-0619-06E and 01-0828-03EE)

Title 10
 California Code of Regulations
 AMEND: 260.102.19, 260.140.41, 260.140.42, 260.140.45, 260.140.46
 Filed 02/07/02
 Effective 02/07/02
 Agency Contact: Kathy Womack (916) 322-3553

DEPARTMENT OF FINANCIAL INSTITUTIONS
Banking

The Department of Financial Institutions is amending the captioned section in order to bring it into conformity with those changes that took place in File No. 98-0303-03S.

Title 10
 California Code of Regulations
 AMEND: 10.3154
 Filed 02/11/02
 Effective 02/11/02
 Agency Contact:
 Sheila Sakamoto (916) 323-7013

DEPARTMENT OF FOOD AND AGRICULTURE
Peach Fruit Fly Eradication Area

This Certificate of Compliance establishes Santa Clara County as an eradication area for the peach fruit fly.

Title 3
 California Code of Regulations
 AMEND: 3591.12 (a)
 Filed 02/07/02
 Effective 02/07/02
 Agency Contact:
 Barbara J. Hass (916) 654-1017

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Universal Waste Rule

This rulemaking action makes permanent the emergency regulations, with amendments, that provide for the collection and management of common, low risk hazardous waste batteries, mercury thermostats, and lamps pursuant to streamlined procedures known as the Universal Waste Rule. The permanent rule includes temporary conditional exemptions for households and small quantity generators to allow time for household hazardous waste collection and other infrastructure for collection and recycling of universal waste to develop.

Title 22
 California Code of Regulations
 AMEND: 66260.10, 66261.9, 66262.11, 66264.1, 66265.1, 66268.1, 66270.1, 66273.1, 66273.2, 66273.3, 66273.4, 66273.5, 66273.6, 66273.7,

66273.8, 66273.9, 66273.10, 66273.11, 66273.12,
66273.13, 66273.14, 66273.15, 66273.16,
66273.17, 66273.18, 66273.19,
Filed 02/08/02
Effective 02/08/02
Agency Contact: Joan Ferber (916) 322-6409

**DEPARTMENT OF TOXIC SUBSTANCES
CONTROL**
Groundwater Remediation Loan Program

This emergency readoption establishes the Groundwater Remediation Loan Program, that provides loans to local agencies to address groundwater contamination problems.

Title 22
California Code of Regulations
ADOPT: 68300, 68301, 68302, 68303, 68304,
68305, 68306, 68307, 68308, 68309
Filed 02/13/02
Effective 02/13/02
Agency Contact: Joan Ferber (916) 322-6409

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**
Orchard Man-Lifts

The regulatory action deals with orchard man-lifts.
Title 8
California Code of Regulations
AMEND: 3641, 3648
Filed 02/08/02
Effective 03/10/02
Agency Contact: Marley Hart (916) 274-5721

OFFICE OF EMERGENCY SERVICES
Disaster Assistance

This certificate of compliance, for an emergency effective August 30, 2001, updates and amends the disaster assistance regulations, consistent with the Natural Disaster Assistance Act.

Title 19
California Code of Regulations
AMEND: 2900, 2910, 2915, 2940, 2945, 2955,
2970, 2980, 2990
Filed 02/08/02
Effective 02/08/02
Agency Contact: Patti Rapozo (916) 845-8256

STATE WATER RESOURCES CONTROL BOARD
Removal San Lorenzo Numeric Nitrate Objective

On June 2, 2000, the Central Coast Regional Water Quality Control Board adopted Resolution No. 00-001 amending the Water Quality Control Plan for the Central Coast Basin (Basin Plan). The amendment removes the numeric nitrate objective for the San Lorenzo River from Chapter Three, page III-14 in the

Basin Plan. It is felt that water quality will continue to be protected by the narrative Basin Plan taste and odor and biostimulatory effects objectives.

Title 23
California Code of Regulations
AMEND: 3923
Filed 02/13/02
Effective 02/13/02
Agency Contact: Ling Tseng (916) 341-5558

**TECHNOLOGY, TRADE AND COMMERCE
AGENCY**
Loan Guarantee Terms

The proposed regulatory action changes the maximum small business loan guarantee amount to \$500,000.

Title 10
California Code of Regulations
AMEND: 5002
Filed 02/11/02
Effective 03/13/02
Agency Contact: Terri Toohey (916) 324-3787

**TECHNOLOGY, TRADE AND COMMERCE
AGENCY**
Farm Guarantee Loans

This action would specify that farm enterprises in disaster areas are eligible for loan guarantees that include one year of operating expenses, if necessary to sustain farm production.

Title 10
California Code of Regulations
AMEND: 4019
Filed 02/11/02
Effective 03/13/02
Agency Contact: Terri Toohey (916) 324-3787

VETERINARY MEDICAL BOARD
Mandatory Continuing Educations

On February 4, 2002, regulations went into effect implementing section 4846.5 of the Business and Professions Code which imposed continuing education requirements for those persons licensed by the Veterinary Medical Board. Among other things, the regulations established an approval process and designated the American Association of Veterinary State Boards (AAVSB) as the Board recognized national continuing education approval body. Subsection (b)(1) of Business and Professions Code section 4846.5 provides for retroactive continuing education credit for prior courses taken after January 1, 2000 which were relevant to veterinary medicine and sponsored or cosponsored by certain entities enumerated in the statute. Similarly, this regulatory action provides that a licensee who completed a continuing education course offered by a provider not identified in section 4846.5 (b)(1) of the Business and Profes-

sions Code, but which was started on or after February 1, 2000, shall retroactively receive continuing education credit for that course if the provider and the course were approved by the AAVSB before February 4, 2002.

Title 16
California Code of Regulations
ADOPT: 2085.4
Filed 02/11/02
Effective 02/11/02
Agency Contact: Deanne Pearce (916) 263-2622

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN OCTOBER 10, 2001 TO
FEBRUARY 13, 2002**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

01/08/02 AMEND: 1402, 1414, 1437

Title 2

01/31/02 ADOPT: 18421.4
01/30/02 AMEND: 55300
01/24/02 ADOPT: 58500
01/24/02 ADOPT: 18450.3, 18450.4, 18450.5
AMEND: 18402
01/22/02 AMEND: 18706
01/16/02 AMEND: 18232, 18702.1, 18705.5,
18708
01/16/02 ADOPT: 18539, 18550
12/27/01 AMEND: 18428
12/26/01 AMEND: 2554(b)(4), 2555(a)(1)
12/21/01 AMEND: 1859.2, 1859.81
12/20/01 AMEND: 45100
12/20/01 AMEND: 2300(b)
12/18/01 AMEND: 2541(c), 2541(d)
12/12/01 ADOPT: 1896.300, 1896.310, 1896.320,
1896.330, 1896.340, 1896.350, 1896.360,
1896.370
11/27/01 ADOPT: 599.911, 599.912, 599.913
11/26/01 ADOPT: 18540
11/16/01 ADOPT: 18539.2
11/06/01 ADOPT: 18536 REPEAL: 18536
10/31/01 AMEND: 599.936
10/31/01 AMEND: 599.911, 599.912, 599.913

10/29/01 ADOPT: 18542
10/29/01 ADOPT: 18543
10/18/01 ADOPT: 18404.2

Title 3

02/07/02 AMEND: 3591.12 (a)
02/04/02 AMEND: 3591.13 (a)
02/04/02 AMEND: 1392.1, 1392.2, 1392.4,
1392.9.1
01/30/02 ADOPT: 2681, 2799 AMEND: 2675,
2676, 2694, 2695, 2697, 2701, 2734,
2773.1, 2773.5, 2774, 2774.5, 2775,
2778, 2782, 2783, 2783.5, 2788, 2789,
2790, 2790.5, 2793, 2794, 2796, 2798,
2801, 2802
01/14/02 AMEND: 3423 (b)
01/14/02 AMEND: 3406 (b)
01/08/02 AMEND: 576.1
01/04/02 AMEND: 3591.16 (a)
12/27/01 AMEND: 2
12/26/01 ADOPT: 950, 951, 952, 953, 954, 955
AMEND: 900.1, 901, 927, 930, 931
12/26/01 AMEND: 6650, 6654, 6656
12/20/01 ADOPT: 7010
12/14/01 AMEND: 3700 (a),(b),(c)
12/12/01 AMEND: 3591.2(a)
12/05/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3,
1301.4, 1301.5, 1301.6, 1301.7, 1301.8,
1301.9
12/04/01 AMEND: 3591.12(a)
11/28/01 AMEND: 3430(b)
11/28/01 AMEND: 1359, 1392.4, 1436.30 RE-
PEAL: 1359.1, 1360, 1361, 1362, 1363
11/27/01 AMEND: 6252, 6256
11/26/01 AMEND: 1380.19
10/25/01 ADOPT: 480.9 AMEND: 300 (c)(1)
10/24/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3,
1301.4, 1301.5, 1301.6, 1301.7, 1301.8,
1301.9
10/19/01 ADOPT: 2302 AMEND: 2303
10/15/01 AMEND: 6450.2, 6450.3
10/15/01 AMEND: 3591.16
10/11/01 ADOPT: 6625 AMEND: 6624

Title 4

02/13/02 AMEND: 1691
02/06/02 AMEND: 1858
01/31/02 AMEND: 1467
01/28/02 AMEND: 1844
01/18/02 ADOPT: 2081
01/11/02 ADOPT: 4160, 4161, 4162, 4263, 4164,
4165, 4166, 4167, 4168, 4169, 4170,
4171 REPEAL: 4160, 4161, 4162, 4164,
4167, 4168, 4169, 4170, 4171, 4172,
4173, 4174, 4175
01/10/02 ADOPT: 2078
01/07/02 ADOPT: 2073
01/07/02 ADOPT: 2072

CALIFORNIA REGULATORY NOTICE REGISTER 2002, VOLUME NO. 8-Z

01/07/02 ADOPT: 2071
 01/07/02 ADOPT: 2076
 01/07/02 ADOPT: 2082
 01/04/02 ADOPT: 2083
 01/03/02 ADOPT: 2079
 01/03/02 ADOPT: 2077
 01/03/02 ADOPT: 2074
 01/03/02 ADOPT: 2070
 01/03/02 ADOPT: 2075
 01/03/02 ADOPT: 2080
 12/12/01 REPEAL: 143.4
 12/11/01 AMEND: 1979
 12/10/01 AMEND: 1969
 11/29/01 ADOPT: 12130
 11/20/01 AMEND: 376, 377
 11/19/01 ADOPT: 12100, 12102, 12104, 12106, 12108, 12110, 12120
 11/19/01 ADOPT: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337 AMEND: 10317(c)
 11/01/01 AMEND: 401, 403
 10/29/01 AMEND: 8070(e)
 10/12/01 ADOPT: 4144
 10/11/01 AMEND: 1433

Title 5

01/24/02 AMEND: 11530, 11531
 01/24/02 AMEND: 43880, 43881, 43882, 43883, 43884
 01/08/02 REPEAL: 11820, 11822, 11823, 11827, 11828, 11829, 11831, 11832, 11833, 11834
 01/08/02 AMEND: 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039
 01/07/02 AMEND: 42713
 01/07/02 AMEND: 73000, 73010, 73100, 73110, 73120, 73130, 73140, 73150, 73160, 73165, 73170, 73180, 73190, 73200, 73210, 73230, 73240, 73260, 73270, 73280, 73290, 73300, 73310, 73320, 73330, 73340, 73350, 73360, 73380, 73390, 73400, 73410, 73420, 73430, 73440
 12/27/01 ADOPT: 31000, 31001, 31003, 31004, 31005, 31006, 31007
 12/26/01 AMEND: 80487
 12/21/01 ADOPT: 1215, 1216, 1217, 1217.5, 1218, 1219, 1219.5
 12/21/01 ADOPT: 31000, 31001, 31002, 31003, 31004, 31005, 31006, 31007
 12/18/01 AMEND: 30950, 30951, 30951.1, 30952, 30953, 30954, 30955, 30956, 30957, 30958, 30959
 12/12/01 AMEND: 80225
 12/05/01 ADOPT: 20430, 20432, 20434, 20436, 20438, 20440, 20442, 20444

12/03/01 AMEND: 55316.5, 55317, 28003.1, 58009
 11/28/01 AMEND: 43810
 11/27/01 AMEND: 42933
 11/26/01 AMEND: 22000
 11/19/01 AMEND: 80026, 80027
 11/15/01 AMEND: 1032 (i)
 11/06/01 AMEND: 18302
 11/05/01 REPEAL: 18140, 18141, 18142, 18143, 18144, 18145, 18146, 18147, 18148, 18149, 18150, 18151, 18152, 18153, 18154, 18155, 18156, 18157, 18158, 18159, 18160, 18161, 18162, 18163, 18164, 18165, 18166, 18167, 18168, 18169, 18170, 18171, 18172, 18173, 18174
 10/26/01 ADOPT: 18400, 18405, 18406, 18407, 18408, 18409, 18409.5, 18410, 18411, 18412, 18413, 18414, 18415, 18416, 18417, 18418, 18419, 18420, 18421, 18422, 18423, 18424, 18425, 18426, 18427, 18428, 18429, 18430, 18431, 18432, 18433, 18434
 10/22/01 AMEND: 74000, 74002, 74004, 74006, 74008, 74010, 74014, 74016, 74018, 74020, 74030, 74040, 74050, 74100, 74120, 74130, 74140, 74150, 74160, 74170, 74180, 74190, 74200, 74300, 74310, 74320, 75000, 75020, 75030, 75040, 75100, 75110, 75120, 75130
 10/16/01 AMEND: 53309, 53310
 10/10/01 AMEND: 59020, 59022, 59023

Title 7

12/11/01 ADOPT: 236
 11/27/01 ADOPT: 212.5

Title 8

02/08/02 AMEND: 3641, 3648
 01/30/02 ADOPT: New Appendix D AMEND: 450, 453, 471, 475, 477, 494 REPEAL: 486, 487
 01/17/02 AMEND: 5155
 01/17/02 ADOPT: 206, 207 AMEND: 201, 205, 208, 212, 212.01, 212.2, 212.3, 212.4, 228, 229, 230, 231, 230.1, 230.2, 234.2
 01/15/02 ADOPT: 14300.1, 14300.2, 14300.03, 14300.04, 14300.05, 14300.06, 14300.07, 14300.08, 14300.09, 14300.10, 14300.11, 14300.12, 14300.13, 14300.14, 14300.15, 14300.16, 14300.17, 14300.18, 14300.19, 14300.20, 14300.21, 14300.22, 14300.23, 14300.24, 14300.25
 01/15/02 ADOPT: 17201, 17202, 17203, 17204, 17205, 17206, 17207, 17208, 17209, 17210, 17211, 17212, 17220, 17221, 17222, 17223, 17224, 17225, 17226, 17227, 17228, 17229, 17230, 17231,

17232, 17234, 17235, 17236, 17237,
17240, 17241, 17242, 17243, 17244,
17245
01/04/02 ADOPT: 11170 AMEND: 11160
01/03/02 AMEND: 3472, 4884, 4885, 4886, 4907,
4924, 4965, 4966, 4968
12/31/01 AMEND: 9792.1
12/26/01 AMEND: 1532.1
12/24/01 AMEND: 31100
12/04/01 ADOPT: 32015, 32016, 32325, 32603,
32604, 6000, 60010, 60020, 60030,
60035, 60040, 60050, 60070, 61000,
61005, 61010, 61020, 61030, 61040,
61050, 61055, 61060, 61065, 61070,
61072, 61075, 61080, 61090, 61100,
61105, 61110, 61115, 61120, 61125,
61130
11/29/01 AMEND: 5031(c)(3)
11/19/01 AMEND: 341.15
11/08/01 AMEND: 3340(c) and (d)
11/02/01 AMEND: 15212
10/30/01 ADOPT: 344.5, 344.6, 344.7, 344.8,
344.9, 344.10, 344.11, 344.12, 344.13,
344.14, 344.15, 344.16, 344.17 AMEND:
Re-number 344.10 to 344.18
10/29/01 AMEND: 65
10/24/01 AMEND: 6249, 6251, 6260, 6262, 6270,
6272, 6281, 6282, 6283, 6290, 6295,
6328, 6329, Appendix A
10/23/01 AMEND: 1698(e)(1)(2)

Title 9

01/17/02 ADOPT: 9533 AMEND: 9500, 9505,
9510, 9515, 9517, 9520, 9525, 9530,
9532, 9535, 9540, 9545
12/12/01 ADOPT: 9500, 9505, 9510, 9515, 9517,
9520, 9525, 9530, 9532, 9533, 9535,
9540, 9545
12/10/01 AMEND: 7050, 7051, 7053, 7054, 7056,
7057

Title 10

02/11/02 AMEND: 5002
02/11/02 AMEND: 10.3154
02/11/02 AMEND: 4019
02/07/02 AMEND: 260.102.19, 260.140.41,
260.140.42, 260.140.45, 260.140.46
01/31/02 ADOPT: 2192.1
01/31/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3,
2130.4, 2130.5, 2130.6, 2130.7, 2130.8
01/10/02 AMEND: 2318.6, 2353.1
01/09/02 AMEND: 2248.31, 2248.32, 2248.35,
2248.40, 2248.41, 2248.42, and 2248.47
01/08/02 AMEND: 5460, 5461, 5462, 5463, 5464,
5465
12/31/01 ADOPT: 1729, 1741.5, 1950.302
AMEND: 1741.5
12/31/01 ADOPT: 2695.30

12/26/01 ADOPT: 2278, 2278.1, 2278.2, 2278.3,
2278.4, 2278.5
12/26/01 AMEND: 2698.70, 2698.71
10/31/01 AMEND: 4081, 4081.5
10/23/01 AMEND: 2699.6619, 2699.6629
10/12/01 AMEND: 2698.61, 2698.62, 2698.65,
2698.66, 2698.67
10/11/01 ADOPT: 2695.30

Title 11

01/14/02 AMEND: 1005
01/09/02 AMEND: 1081
12/31/01 AMEND: 3000, 3001, 3003, 3007
12/05/01 AMEND: 1005
10/29/01 ADOPT: 410, 411, 415, 416, 417, 418,
419, 420, 421, 422, 423, 424, 425, 426
10/17/01 AMEND: 1005, 1018

Title 13

02/05/02 AMEND: 160.00, 170.00
01/30/02 AMEND: 553.70
01/18/02 AMEND: 599
01/10/02 AMEND: 50.45 REPEAL: 50.40
10/30/01 AMEND: 553
10/24/01 AMEND: 1200, 1201, 1213.2
10/17/01 AMEND: 20.04

Title 14

02/04/02 AMEND: 17979
01/16/02 AMEND: 17943(b)(26)
01/10/02 ADOPT: 2.10, 5.60, 28.59 AMEND:
1.24, 2.06, 4.00, 4.15, 5.00, 5.05, 5.15,
5.20, 5.35, 5.40, 5.75, 7.00, 7.50, 8.00,
27.60, 27.65, 27.82, 28.27, 28.54, 28.55,
29.15, 40 REPEAL: 2.01, 2.02, 2.03,
2.04, 2.07, 2.10, 2.13, 2.14, 5.70, 41,
41.5, 42, 42.5
01/09/02 ADOPT: 14021, 14022, 14023, 14024,
14025, 14026, 14027, 14028, 14029,
14030, 14031, 14032
12/31/01 ADOPT: 749.1
12/20/01 AMEND: 2.00
12/19/01 ADOPT: 180.4
12/17/01 AMEND: 120
12/13/01 AMEND: 670.5
12/11/01 ADOPT: 17367, 17368, 17369, 17370.1,
17370.2, 18225
11/29/01 ADOPT: 1057, 1057.1, 1057.2, 1057.3,
1057.4, 1057.5, 1058, 1058.1, 1058.2,
1058.3, 1058.4, 1058.5
11/20/01 AMEND: 895.1, 898, 898.2, 914.8
[934.8, 954.8], 916 [936, 956], 916.2
[936.2, 956.2], 916.9 [936.9, 956.9],
916.11 [936.11, 956.11], 916.12 [936.12,
956.12], 923.3 [943.3, 963.3], 923.9
[943.9, 963.9]
11/16/01 AMEND: 1038, 1104.1
11/08/01 AMEND: 150.16

11/07/01 AMEND: 1037.5
 11/01/01 ADOPT: 17211, 17211.1, 17211.2,
 17211.3, 17211.4, 17211.5, 17211.6,
 17211.7, 17211.8, 17211.9
 10/31/01 AMEND: 300(a)
 10/31/01 AMEND: 163, 163.5, 164
 10/30/01 ADOPT: 1059
 10/25/01 AMEND: 165, 165.5
 10/23/01 AMEND: 550, 551, 552
 10/17/01 AMEND: 27.82, 28.54, 28.55

Title 15

01/31/02 AMEND: 3041.3
 01/09/02 ADOPT: 4742, 4743, 4744, 4745, 4746,
 4747 AMEND: 4730, 4732, 4733, 4734,
 4735, 4736, 4737, 4739, 4740
 01/08/02 REPEAL: 3074
 11/29/01 ADOPT: 4746.5
 11/27/01 AMEND: 6045.2(e)(2)(G)
 11/20/01 ADOPT: 2646.1 AMEND: 2646
 10/23/01 AMEND: 3375.2, 3378
 10/16/01 AMEND: 3341.5

Title 16

02/13/02 AMEND: 3361.1
 02/11/02 ADOPT: 2085.4
 02/04/02 AMEND: 1399.157
 02/04/02 ADOPT: 2085, 2085.1, 2085.2, 2085.3,
 2085.4, 2085.5, 2085.6, 2085.7, 2085.8,
 2085.9, 2085.10, 2085.11, 2085.12,
 2085.13 AMEND: 2070
 01/31/02 AMEND: 411
 01/31/02 ADOPT: 1399.698
 01/28/02 AMEND: 1531
 01/18/02 AMEND: 1391.7
 01/14/02 ADOPT: 1711
 01/14/02 ADOPT: 980.1 AMEND: 974
 12/19/01 AMEND: 1388, 1388.6, 1389, 1392,
 1397.63 REPEAL: 1388.5
 12/18/01 AMEND: 1397.61, 1397.64, 1397.65
 12/17/01 ADOPT: 2412 AMEND: 2418 REPEAL:
 2411 (a)(1)(A)
 12/17/01 AMEND: 1088
 12/07/01 ADOPT: 386
 12/04/01 AMEND: 1887.3
 11/28/01 ADOPT: 872, 872.1
 11/27/01 AMEND: 3340.16.5
 11/20/01 ADOPT: 2450
 10/31/01 ADOPT: 890
 10/23/01 ADOPT: 1999.5 AMEND: 1970, 1970.6
 10/19/01 ADOPT: 1357.1, 1357.2, 1357.3, 1357.4,
 1357.5, 1357.6
 10/18/01 AMEND: 2420
 10/16/01 AMEND: 1870
 10/16/01 AMEND: 1391.12(b)

10/15/01 ADOPT: 1024.1, 1024.3, 1024.4, 1024.5,
 1024.6, 1024.7, 1024.8, 1024.9, 1024.10,
 1024.11, 1024.12 AMEND: 1000 RE-
 PEAL: 1024.1

Title 17

12/28/01 AMEND: 6508
 11/19/01 ADOPT: 37000, 37020, 37025, 37100
 11/19/01 AMEND: 57310, 57332, 57530
 11/14/01 ADOPT: 33001, 33002, 33003, 33004,
 3005, 33006, 33007, 33008, 33009,
 33010, 33011, 33012, 33013, 330014,
 33015, 33025 AMEND: 33020, 33030,
 33040 REPEAL: 33001, 33010
 11/07/01 AMEND: 60201
 11/05/01 ADOPT: 2638 AMEND: 2500, 2502,
 2505, 2551, 2552, 2553, 2596, 2614,
 2626
 10/29/01 ADOPT: 30400.5, 30400.60, 30403.5,
 30403.8, 30406
 10/29/01 ADOPT: 30437 AMEND: 30424, 30425,
 30427, 30427.2, 30436, 30447
 10/25/01 ADOPT: 54327.2 AMEND: 54302,
 54327, 54327.1, 56002, 56093, 58651
 10/15/01 AMEND: 30225, 30253, 30350
 10/11/01 AMEND: 56033

Title 18

01/16/02 ADOPT: 4063.5, 4098 AMEND: 4018,
 4021, 4022, 4023, 4026, 4027, 4034,
 4047, 4055, 4056, 4057, 4058, 4059,
 4060, 4062, 4063, 4064, 4065, 4080,
 4081, 4091, 4092 REPEAL: 4028, 4067,
 4079, 4082
 01/10/02 ADOPT: 29
 01/08/02 AMEND: 1620
 01/07/02 AMEND: 122.5
 12/24/01 ADOPT: 17951-6 AMEND: 17951-4
 12/24/01 AMEND: 17000.30
 12/17/01 AMEND: 1642
 12/14/01 ADOPT: 138
 12/06/01 AMEND: 1660
 12/04/01 AMEND: 1661
 11/20/01 AMEND: 19513
 11/08/01 ADOPT: 206
 11/01/01 AMEND: 1617
 11/01/01 AMEND: 1598
 10/12/01 ADOPT: 18567

Title 19

02/08/02 AMEND: 2900, 2910, 2915, 2940, 2945,
 2955, 2970, 2980, 2990
 12/28/01 AMEND: 981.3
 12/27/01 ADOPT: 565.1, 567.1, 567.2, 567.3,
 567.4, 567.5, 567.6, 567.7, 567.8, 573,
 575 AMEND: 550, 550.2, 557.1, 557.3,
 557.4, 557.5, 557.6, 557.8, 557.9, 557.12,

557.13, 557.14, 557.16, 557.18, 557.19,
557.20, 557.21, 557.22, 557.23, 560,
560.1, 560.2, 560.3

Title 20

01/16/02 AMEND: 201

Title 21

02/05/02 AMEND: 7101, 7102, 7111, 7114, 7116

12/04/01 AMEND: 7000

Title 22

02/13/02 ADOPT: 68300, 68301, 68302, 68303,
68304, 68305, 68306, 68307, 68308,
68309

02/11/02 ADOPT: 110413, 110550, 113100,
113200, 113300 REPEAL: 12-104.1, 12-
104.432, 12-221

02/08/02 AMEND: 66260.10, 66261.9, 66262.11,
66264.1, 66265.1, 66268.1, 66270.1,
66273.1, 66273.2, 66273.3, 66273.4,
66273.5, 66273.6, 66273.7, 66273.8,
66273.9, 66273.10, 66273.11, 66273.12,
66273.13, 66273.14, 66273.15, 66273.16,
66273.17, 66273.18, 66273.19

01/30/02 ADOPT: 67450.40, 67450.41, 67450.42,
67450.43, 67450.44, 67450.45, 67450.46,
67450.47, 67450.48, 67450.49, 67450.50
AMEND: 66262.20, 66270.6

01/24/02 REPEAL: Repeal the language “(See
Section 3901.1, Retraining Benefits Defi-
nitions)” below Article 1.5. Retraining
Benefits.

01/17/02 ADOPT: 84400, 84401, 84422, 84461,
84465, 84468.1, 84468.2, 84468.4, 84478
REPEAL: 84001, 84022, 84061, 84063,
84065, 84300, 84322, 84322.1, 84322.2,
84361, 84365, 84365.5, 84368.3, 84369

01/08/02 ADOPT: 7630, 7632, 7632.1, 7632.3,
7632.5, 7634, 7634.1, 7634.3, 7634.5,
7636, 7636.1, 7636.3, 7636.5, 7637.7,
7636.9, 7638, 7638.1, 7638.3, 7638.5,
7638.7, 7638.9, 7638.11, 7638.13

12/31/01 AMEND: 66260.10, 66262.12, 66263.40,
66268.7 REPEAL: 66263.42

12/19/01 AMEND: 5151 (c), 5151 (e), 51518 (b),
51521 (i), 51527 (b)

12/18/01 ADOPT: 11000, 110042, 110046,
110088, 110099, 110129, 110135,
110147, 110148, 110150, 110164,
110182, 110184, 110186, 110194,
110200, 110220, 110224, 110230,
110252, 110261, 110289, 110341,
110410, 110431, 110436, 110445,
110456, 110474, 110478, 110479

11/30/01 ADOPT: 66273.6, 66273.80-66273.90
AMEND: 66261.9, 66273.1, 66273.8,
66273.9

11/13/01 ADOPT: 64860

11/08/01 ADOPT: 67900.1, 67900.2, 67900.3,
67900.4, 67900.5, 67900.6, 67900.7,
67900.8, 67900.9, 67900.10, 67900.11,
67900.12

11/08/01 ADOPT: 66250, 66250.1, 66250.2

11/06/01 AMEND: 66264.140, 66264.143,
66264.145, 66264.147, 66265.140,
66265.143, 66265.145, 66265.147

11/06/01 AMEND: 4408, 4409, 4414

11/02/01 ADOPT: 100901, 100902, 100903,
100904, 100904.5 AMEND: 100900

11/02/01 ADOPT: 66261.9, 66273.1, 66273.2,
66273.3, 66273.4, 66273.5, 66273.6,
66273.7, 66273.8, 66273.9, 66273.10,
66273.11, 66273.12, 66273.13, 66273.14,
66273.15, 66273.16, 66273.17, 66273.18,
66273.19, 66273.20, 66273.30, 66273.31,
66273.32, 66273.33

10/24/01 AMEND: 12000

Title 22, MPP

11/08/01 AMEND: 84110, 85002, 87102

10/25/01 ADOPT: 85081, 87593 AMEND: 85001,
87101

Title 23

02/13/02 AMEND: 3923

01/03/02 AMEND: 3904

12/28/01 AMEND: 451.1, 451.4, 451.5

11/27/01 AMEND: 3952

Title 25

01/08/02 ADOPT: 7300, 7301, 7302, 7303, 7304,
7305, 7306, 7307, 7308, 7309, 7310,
7311, 7312, 7313, 7314, 7315, 7316,
7317, 7318, 7319, 7320, 7321, 7322,
7323, 7224, 7325, 7326, 7327, 7328,
7329, 7330, 7331, 7332, 7333, 7334,
7335, 7336

01/03/02 ADOPT: 1302, 1316, 1317, 1318, 1319
AMEND: 1300, 1304, 1306, 1310

12/19/01 AMEND: 8202, 8203, 8212, 8212.1

Title 27

10/24/01 AMEND: 15240

Title 28

12/27/01 ADOPT: 1300.41.8

12/12/01 ADOPT: 1000

Title MPP

01/30/02 ADOPT: 69-209, 69-210 AMEND: 69-
201, 69-202, 69-203, 69-204, 69-205,
69-206, 69-207, 69-208, 69-211, 69-212,
69-213, 6-214, 69-215, 69-216, 69-217,
69-301 REPEAL: 69-210, 69-221

01/23/02 ADOPT: 33-135 AMEND: 33-120, 33-
510, 33-805

01/14/02 ADOPT: 63-016 AMEND: 63-102, 63-
300, 63-504, 63-801, 63-802, 63-804

12/11/01 AMEND: 44-314, 82-518
 11/29/01 ADOPT: 44-302 AMEND: 25-301, 25-302, 25-303, 25-304, 25-305, 25-306, 25-310.3, 25-330.9, 25-506, 44-304, 44-305, 44-325, 44-327, 80-310
 10/15/01 AMEND: 44-211.63, 44-211.64
 10/10/01 AMEND: 42-205, 43-119, 44-133

OAL REGULATORY DETERMINATIONS

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW 2002 OAL Determination No. 1 February 8, 2002

Requested by:
 CHEMICAL INDUSTRY COUNCIL

Concerning:
 OFFICE OF ENVIRONMENTAL HEALTH HAZARD
 ASSESSMENT—**Procedure for Prioritizing Candidate
 Chemicals for Consideration Under Propo-
 sition 65 by the “State’s Qualified Experts”**

**Determination issued pursuant to Government
 Code Section 11340.5; California Code of Regula-
 tions, Title 1, Section 121 et seq.**

ISSUE

Does the Office of Environmental Health Hazard Assessment’s “Procedure for Prioritizing Candidate Chemicals for Consideration Under Proposition 65 by the “State’s Qualified Experts”” constitute a regulation which is required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act?¹

CONCLUSION

The Office of Environmental Health Hazard Assessment’s “Procedure for Prioritizing Candidate Chemicals for Consideration Under Proposition 65 by the ‘State’s Qualified Experts’” does not constitute a

regulation required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act. This document is an integral part and an essential step of the Governor and his designates carrying out the Governor’s Proposition 65 duties under Health and Safety Code section 25249.8, and therefore, falls within the scope of the express statutory exemption from the Administrative Procedure Act contained in Health and Safety Code section 25249.8, subdivision (e).

BACKGROUND

General Background Regarding Proposition 65: Proposition 65, also known as the “Safe Drinking Water and Toxic Enforcement Act of 1986,” was a ballot initiative adopted by California voters in the November 1986 General Election. This initiative was designed to protect people and their water supplies from harmful chemicals. Proposition 65 added chapter 6.6 to division 20 of the Health and Safety Code, encompassing sections 25249.5 through 25249.13 of the Health and Safety Code (along with making a few other statutory additions and amendments).

Health and Safety Code section 25249.8, as set forth in Proposition 65,² generally requires that the Governor (among other duties) publish at least annually a list of chemicals known to the state to cause cancer or reproductive toxicity. (Health and Safety Code section 25249.8 will be quoted in full and discussed in detail in the “ANALYSIS” section below.) For the listed chemicals, Proposition 65 establishes two primary prohibitions or requirements. First, Health and Safety Code section 25249.5 generally prohibits contaminating drinking water, stating: “No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law [with some referenced exemptions].” Second, Health and Safety Code section 25249.6 generally provides for a warning requirement, stating: “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual [with some referenced exemptions].”

¹ The request for determination was filed by the Chemical Industry Council which is represented in this matter by attorneys Gene Livingston and S. Craig Hunter, Livingston & Mattesich Law Corporation, 1201 K Street, Suite 1100, Sacramento, CA 95814. The Office of Environmental Health Hazard Assessment’s response was filed by Colleen Heck, Chief Counsel, Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814. The request was given a file number of 00-004. This determination may be cited as “2002 OAL Determination No. 1.”

² Throughout the remainder of this determination, when we refer to “Proposition 65,” we are generally referring to chapter 6.6 of division 20 of the Health and Safety Code (Health and Safety Code sections 25249.5 through 25249.13), including any amendments to those sections subsequent to the original adoption of the Safe Drinking Water and Toxic Enforcement Act of 1986.

Proposition 65 further provides for its implementation in Health and Safety Code section 25249.12, which states: "The Governor shall designate a lead agency and such other agencies as may be required to implement the provisions of this chapter including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement the provisions of this chapter and to further its purposes." Pursuant to this provision, the Governor first designated California's Health and Welfare Agency and then, commencing in 1991 (and currently), the Office of Environmental Health Hazard Assessment ("OEHHA") as the "lead agency" for Proposition 65 implementation. The lead agency has adopted a body of regulations to implement Proposition 65 which is set forth in the California Code of Regulations ("CCR"), title 22, sections 12000 through 12903 and section 14000.

In addition, two scientific committees have been created in OEHHA to advise and assist the Governor and the Director of OEHHA in the implementation of Health and Safety Code section 25249.8 (including the listing of chemicals known to the state to cause cancer or reproductive toxicity). The members of the first committee, the Carcinogen Identification Committee ("Carcinogen Committee"), have been designated as the "state's qualified experts" for rendering an opinion on whether specific chemicals have been clearly shown to cause cancer. The members of the second committee, the Developmental and Reproductive Toxicant (DART) Identification Committee ("DART Committee"), have been designated as the "state's qualified experts" for rendering an opinion on whether specific chemicals have been clearly shown to cause reproductive toxicity. These committees are composed of experts from areas of specialization such as epidemiology, oncology, developmental toxicology, reproductive toxicology, teratology, pathology, medicine, public health, biostatistics, biology, toxicology, and related fields. The members of these two committees, who are appointed by the Governor and serve at the pleasure of the Governor, are considered to be members of OEHHA's "Science Advisory Board" (or "SAB") for Proposition 65, and the two committees are sometimes also referred to collectively as the "SAB Identification Committees." CCR, title 22, sections 12301 through 12305 establish these committees and set forth their duties.

Background Regarding this Request and the Document at Issue: The Chemical Industry Council has requested a determination from the Office of Administrative Law ("OAL") pursuant to Government Code section 11340.5 and CCR, title 1, section 121 et seq. regarding a document issued by OEHHA entitled "Procedure for Prioritizing Candidate Chemicals for

Consideration Under Proposition 65 by the 'State's Qualified Experts'" (the "Prioritization Procedure"; dated May 1997).

The Prioritization Procedure pertains to the requirement of Health and Safety Code section 25249.8 that the Governor publish at least annually a list of those chemicals known to the state to cause cancer or reproductive toxicity.³ One of the mechanisms by which a chemical is placed on the Governor's list is "if in the opinion of the state's qualified experts [the chemical] has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity" (Health & Saf. Code, sec. 25249.8, subd. (b).) The state's qualified experts—the Carcinogen Committee and the DART Committee—evaluate chemicals for possible inclusion on the Governor's list and render the required opinions as to whether particular chemicals cause cancer or reproductive toxicity. Related to these scientific assessments by the SAB Identification Committees, OEHHA has developed the Prioritization Procedure to delineate OEHHA's role in the preliminary evaluation of chemicals for the two committees. OEHHA has described in general terms the purpose and content of the Prioritization Procedure as follows:

"The purpose of this document is to describe the procedure used by OEHHA to identify, prioritize, and select candidate chemicals for evaluation by the SAB Identification Committees. The procedure is designed to ensure that the efforts of the SAB are focused on chemicals which pose the greatest hazard to Californians, and that these chemicals are selected in an open, objective and predictable manner. This procedure ensures that chemicals posing the highest level of carcinogenic, reproductive or developmental hazard concern are addressed first and forthwith by the SAB. At appropriate points in the prioritization process, opportunity is provided for input and review by state agencies and departments, individual SAB Identification Committee members, the Committees as a whole if they so choose, the scientific community, and the public. This process has been the subject of extensive review and comment by the public, external scientists, and by the SAB Identification Committees. This refined prioritization process should ensure that chemicals posing the highest degree of hazard are identified promptly and brought to the SAB for their evaluation and finding within an estimated time frame of 9 to 15 months." (Prioritization Procedure, page 1.)

³ The list of chemicals known to the state to cause cancer or reproductive toxicity is published in CCR, title 22, section 12000.

Some of the successive prioritization steps set forth in the Prioritization Procedure can be described briefly and generally as follows: OEHHA maintains a list of potential candidate chemicals ("Category I" chemicals). Chemicals are randomly selected from Category I (with published notice in the California Regulatory Notice Register of the random selection). For the randomly selected chemicals, OEHHA reviews and evaluates data, develops draft data summaries, and assigns draft priorities. OEHHA then releases the draft data summaries and draft priorities for scientific and public comment (with a 60-day comment period), holds a public workshop, analyzes comments, and assigns final priorities. Chemicals identified as posing a high hazard concern are placed on the "Candidate List." OEHHA then selects chemicals from the Candidate List for the preparation of draft hazard identification documents and for consideration by the appropriate SAB Identification Committee. For the selected chemicals, OEHHA publishes a notice in the California Regulatory Notice Register and solicits scientific data, studies and analyses. The SAB Identification Committees, as the state's qualified experts, thereafter consider the selected chemicals for inclusion on the Governor's list of chemicals known to the state to cause cancer or reproductive toxicity.

OEHHA did not formally adopt the Prioritization Procedure as a regulation pursuant to the rulemaking provisions of California's Administrative Procedure Act ("APA"; ch. 3.5 (commencing with sec. 11340), pt. 1, div. 3, tit. 2, Gov. Code).⁴ The Chemical Industry Council generally asserts in its request for determination that OEHHA's Prioritization Procedure is a regulation which is required to be adopted pursuant to the APA. OEHHA generally asserts in its

response to the request for determination that the Prioritization Procedure is not a regulation which is required to be adopted under the APA. It is this issue which OAL addresses below.

ANALYSIS

Government Code section 11340.5, subdivision (a), generally prohibits state agencies from issuing rules without complying with the APA. It states as follows:

"(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]."

For purposes of the APA, Government Code section 11342.600 defines "regulation" as follows:

"'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

Generally, all regulations issued by state agencies in the executive branch of government are required to be adopted pursuant to the APA, *unless expressly exempted by statute*. (Gov. Code, sec. 11346; *United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010, 74 Cal.Rptr.2d 407, 411 ("When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language." (Emphasis added.)) A number of statutes have been enacted, both within the APA itself and outside the APA, which set forth express exemptions from APA requirements. For example, Government Code section 11340.9 expressly sets forth within the APA a number of types of regulations and other circumstances where the APA does not apply. Similarly, statutes outside the APA may contain express exemptions from the APA rulemaking requirements, often exemptions which apply to particular regulations of a particular state agency.

In order to determine whether the APA applies to OEHHA's Prioritization Procedure, it is necessary to examine the specific language of Health and Safety Code section 25249.8, the statute pertaining to the Governor publishing the list of chemicals known to the

⁴ In 1996, as part of the development of the Prioritization Procedure, OEHHA published in the California Regulatory Notice Register a "Notice of General Public Interest" regarding the public availability of the draft Prioritization Procedure and provided for a 60-day public comment period regarding the draft. (California Regulatory Notice Register 96, No. 40-Z, October 4, 1996, p. 1865.) During the public comment period, OEHHA also held a public workshop to discuss and receive comments on the draft. OEHHA received a number of public comments and summarized and responded to these comments collectively by general topic area. Although OEHHA did provide the public notice, opportunity for public comments, and summary and response to public comments discussed above, the agency did not formally adopt (and apparently did not intend to formally adopt) the Prioritization Procedure in accordance with all of the specific requirements of the APA. For example, a formal APA notice was not published in accordance with Government Code sections 11346.4 and 11346.5, a formal "final statement of reasons" was not prepared in accordance with Government Code section 11346.9, subdivision (a), and a complete rulemaking file was not maintained in accordance with Government Code section 11347.3 and submitted to OAL for review in accordance with Government Code sections and 11349 through 11349.3.

state to cause cancer or reproductive toxicity. Health and Safety Code section 25249.8 reads in full as follows:

“(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of [Proposition 65], and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d).

“(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of [Proposition 65] if in the opinion of the state’s qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

“(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state’s qualified experts have not found to have been adequately tested as required.

“(d) The Governor shall identify and consult with the state’s qualified experts as necessary to carry out his duties under this section.

“(e) *In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code section 11370. [Emphasis added.]*”⁵

In connection with our analysis of the applicability of the APA to OEHHA’s Prioritization Procedure, we must focus specifically upon Health and Safety Code section 25249.8, subdivision (e), as quoted immediately above. Health and Safety Code section 25249.8, subdivision (e), establishes an *express statutory exemption* from APA requirements by providing in clear, unequivocal language that, to the extent that the

Governor and his designates are carrying out the various duties of the Governor under section 25249.8, they “shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act”

In examining the language of the APA exemption in Health and Safety Code section 25249.8, subdivision (e), it is significant that the scope of the exemption includes not only the actions of the Governor but also the actions of the Governor’s “designates” in relation to carrying out the various duties of the Governor under Health and Safety Code section 25249.8. The Governor’s “designates” in this context include OEHHA (the designated “lead agency” for Proposition 65 implementation), and the Carcinogen Committee and the DART Committee in OEHHA. We note that Health and Safety Code section 25249.8, subdivision (d), further requires that “[t]he Governor shall identify and consult with the state’s qualified experts as necessary to carry out his duties under this section.” The opinions and findings of the “qualified experts” are also referenced in relation to the particular duties of the Governor in subdivision (b) of Health and Safety Code section 25249.8.

We read Health and Safety Code section 25249.8 as providing that the Governor and his designates—including OEHHA and the Carcinogen Committee and DART Committee in OEHHA—shall be responsible for carrying out the duties of the Governor under that section (including the periodic publication of the list of chemicals known to the state to cause cancer or reproductive toxicity). Moreover, to the extent that the Governor and his designates are carrying out those duties, they and the rules and procedures that they establish in relation to carrying out those specific duties shall be exempt from the APA. The Prioritization Procedure sets forth the procedures used by OEHHA to identify, prioritize, and select candidate chemicals for further evaluation by the SAB Identification Committees, in direct connection with the process of determining the specific chemicals to be included on the Governor’s list under Health and Safety Code section 25249.8. The Chemical Industry Council itself has characterized the Prioritization Procedure as follows: “The [Prioritization Procedure] is undertaken as *OEHHA’s initial steps to listing a chemical on the Proposition 65 chemical list.*”⁶ (Emphasis added.) We think that OEHHA’s development and use of the Prioritization Procedure is an integral part and an essential step of the Governor and his designates carrying out the Governor’s duty of periodically publishing a list of chemicals known to the state to cause cancer or reproductive toxicity. Thus,

⁵ Government Code section 11370 reads as follows: “Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.”

⁶ The Chemical Industry Council’s request for determination, page 8.

we think that the APA exemption in Health and Safety Code section 25249.8, subdivision (e), applies to the Prioritization Procedure.

In the case of *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744, the California Court of Appeal considered an issue of the scope of an APA exemption. This case involved the APA exemption for a regulation which “establishes or fixes rates, prices or tariffs.”⁷ The case arose when the Department of Industrial Relations established wage rates for field surveyors throughout northern California under the California prevailing wage laws (Lab. Code, sec. 1720 et seq.). The director of the Department of Industrial Relations initially determined that field surveyor classifications were covered under the prevailing wage laws (the “coverage determination”). The director of the Department of Industrial Relations subsequently determined the wage rates to be paid to the surveyors (the “wage rate determination”). The Court of Appeal stated that the director’s wage rate determination was exempt under the “rates, prices or tariffs” exemption. At issue on appeal was whether the director’s initial coverage determination was also within the scope of this APA exemption. In its decision, the California Court of Appeal stated:

“[The Department of Industrial Relations] argues that the coverage determination should be exempted from the APA requirements because it is part of the rate setting process. Labor Code section 1773 provides the method to be used by the director in determining general prevailing rates. In this determination the director shall fix the rate for each craft, classification or type of work. *Thus, the determination of the classification or type of work covered is an essential step in the wage determination process and a rate cannot be fixed without such a determination. As the wage determination process is exempted from the prior hearing requirements of the APA, coverage determination, as an integral part of that process, is also exempted.* There is no requirement that the director grant an [APA] hearing prior to the determination of the type of work covered. [Emphasis added.]” (121 Cal.App.3d at 128, 174 Cal.Rptr. at 748.)

Just as the coverage determination was an integral part and an essential step of the wage rate determination process and therefore fell within the scope of the “rates, prices or tariffs” APA exemption in the *Winzler & Kelly v. Department of Industrial Relations* case, we think that in the matter currently at issue the OEHH

Prioritization Procedure is an integral part and an essential step of the Governor and his designates carrying out the Governor’s duties under Health and Safety Code section 25249.8, and therefore the Prioritization Procedure falls within the scope of the APA exemption in Health and Safety Code section 25249.8, subdivision (e).

In its request for determination, the Chemical Industry Council characterizes the APA exemption in Health and Safety Code section 25249.8, subdivision (e), as a “very limited” exemption and states the following: “That single special express statutory exemption only exists for, and applies to, the actual listing by the Governor of chemicals on the Proposition 65 list, pursuant to Health and Safety Code section 25249.8.”⁸ This reading of the APA exemption in Health and Safety Code section 25249.8, subdivision (e)—essentially limiting the scope of the exemption to only the actual ultimate listing of chemicals itself—is unduly narrow. As we indicated earlier in our analysis of this APA exemption, Health and Safety Code section 25249.8, subdivision (e), expressly exempts from the APA not only the actions of the Governor but also the actions of the Governor’s designates in carrying out the duties of the Governor under section 25249.8. Furthermore, Health and Safety Code section 25249.8, subdivision (d), specifically requires that “[t]he Governor shall identify and consult with the state’s qualified experts as necessary to carry out his duties under this section,” and subdivision (b) of section 25249.8 also refers to the opinions or findings of the “state’s qualified experts.” Thus, we think that the exemption provided for in Health and Safety Code section 25249.8, subdivision (e), includes within its scope the spectrum of activities, rules, and procedures involved in carrying out the Governor’s duties under section 25249.8, including the activities, rules, and procedures of OEHH, the Carcinogen Committee, and the DART Committee in fulfilling the Governor’s duty of periodically publishing a list of chemicals known to the state to cause cancer or reproductive toxicity. OEHH’s Prioritization Procedure is within this scope of the APA exemption, being an integral part and an essential step of the Governor and his designates carrying out the Governor’s duties under Health and Safety Code section 25249.8.

The Chemical Industry Council, in setting forth its position that no special express statutory APA exemption (including the exemption in Health and Safety Code section 25249.8, subdivision (e)) applies to the Prioritization Procedure, focuses upon Health and Safety Code section 25249.12, the statute which

⁷ The “rates, prices or tariffs” APA exemption was contained in Government Code section 11380 at the time of the actions considered in the *Winzler & Kelly v. Department of Industrial Relations* decision. This exemption now appears in Government Code section 11340.9, subdivision (g).

⁸ The Chemical Industry Council’s request for determination, page 15.

provides general rulemaking authority for the adoption of Proposition 65 regulations. Health and Safety Code section 25249.12 reads: "The Governor shall designate a lead agency and such other agencies as may be required to implement the provisions of [Proposition 65] including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement the provisions of [Proposition 65] and to further its purposes." The Chemical Industry Council states:

"No special express statutory exemption appears in [Proposition 65] for any section other than Health and Safety Code section 25249.8. Specifically, Health and Safety Code section 25249.12, the statute that empowers OEHHA to adopt regulations to implement [Proposition 65], and presumably the statute that OEHHA used to adopt the [Prioritization Procedure], has no special express exemption. Since special exemptions from compliance must be expressed in the statute, and may not be implied [citations omitted], OEHHA's implementation of [Proposition 65] and, therefore, its adoption of the [Prioritization Procedure] must be done in full compliance with the APA."⁹

Health and Safety Code section 25249.12 provides the general rulemaking authority for OEHHA to adopt regulations implementing Proposition 65, and generally those regulations (in the absence of an applicable APA exemption) must be adopted in compliance with the APA. However, as indicated earlier, we think that, in establishing the Prioritization Procedure, OEHHA was implementing Health and Safety Code section 25249.8, and therefore, the Prioritization Procedure falls within the scope of the express statutory APA exemption set forth in Health and Safety Code section 25249.8, subdivision (e). The fact that Health and Safety Code section 25249.12, the general rulemaking authority statute relating to Proposition 65 regulations, does not contain within its own terms an express APA exemption is not meaningful since an applicable express APA exemption does exist in Health and Safety Code section 25249.8, the section that OEHHA was implementing in establishing the Prioritization Procedure.

The Chemical Industry Council, in focusing upon OEHHA's general Proposition 65 rulemaking authority as set forth in Health and Safety Code section 25249.12, further states:

"The California Code of Regulations also supports the conclusion that no special express statutory exemption exists for OEHHA's adoption of the [Prioritization Procedure] (the authority cited for title 22, California Code of Regulations section

12000 {the actual Proposition 65 chemical list} is Health and Safety Code section 25249.8 . . . ; the authority cited for all other regulations is Health and Safety Code section 25249.12 . . .). Clearly, when adopting implementing regulations, OEHHA has recognized the need to comply with the APA. It must have done so also when adopting the [Prioritization Procedure]."¹⁰

OEHHA (and its predecessor Proposition 65 lead agency, the Health and Welfare Agency) have, in fact, periodically published a list of chemicals known to the state to cause cancer or reproductive toxicity in CCR, title 22, section 12000. Section 12000 properly cites as "authority" Health and Safety Code section 25249.8, since section 25249.8 (including the exemption in subdivision (e)) is being relied upon as the specific authority for the adoption and amendment of Section 12000.¹¹ This list of chemicals in CCR, title 22, section 12000, although not subject to the APA because of the statutory APA exemption, is specifically required to be "published" pursuant to Health and Safety Code section 25249.8, and the publication of the list of chemicals in the CCR satisfies the publication requirement. OEHHA (and its predecessor Proposition 65 lead agency, the Health and Welfare Agency) have, in fact, also properly adopted a number of Proposition 65 regulations in compliance with the APA under the general Proposition 65 rulemaking authority of Health and Safety Code section 25249.12.¹² These regulations adopted under the APA are included in chapter 3, subdivision 1, part 2, division 2 of title 22 of the CCR and properly cite Health and Safety Code section 25249.12 as the rulemaking "authority" for the adoption of these regulations.

While OEHHA has appropriately recognized that as a general matter Proposition 65 regulations must be adopted pursuant to the APA (as reflected by the many Proposition 65 regulations citing Health and Safety Code section 25249.12 as authority), this recognition

¹⁰ The Chemical Industry Council's request for determination, page 17.

¹¹ Government Code section 11349, subdivision (b), defines "authority" for APA purposes to mean "the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation."

¹² Examples of Proposition 65 regulations which have been adopted under the APA (and which cite Health and Safety Code section 25249.12 as "authority") include (a) CCR, title 22, sections 12401, 12403, and 12405 which further define when there has been a "discharge" or "release" of a listed chemical under Health and Safety Code section 25249.5; (b) CCR, title 22, sections 12501, 12502, 12503, and 12504 which further define when there has been an "exposure" to a listed chemical under Health and Safety Code section 25249.6; and (c) CCR, title 22, section 12903 which relates to Proposition 65 "notices of violation" under Health and Safety Code section 25249.7.

⁹ The Chemical Industry Council's request for determination, page 16.

does not mean that *all* Proposition 65 rules and procedures, beyond the publication of the actual list of chemicals in CCR, title 22, section 12000, must necessarily be adopted pursuant to the APA. As stated earlier, we think that the exemption in Health and Safety Code section 25249.8, subdivision (e), includes within its scope not just the published list of chemicals set forth in CCR, title 22, section 12000, but also other rules and procedures (like OEHHA's Prioritization Procedure) which constitute an integral part and an essential step of the Governor and his designates carrying out the Governor's duties under Health and Safety Code section 25249.8. In summary, while we recognize that in general Proposition 65 regulations must be adopted pursuant to the APA and that those regulations appropriately will cite Health and Safety Code section 25249.12 as "authority," we also think that the express APA exemption in Health and Safety Code section 25249.8 applies to rules and procedures (such as the Prioritization Procedure) which are an integral part and an essential step of the Governor and his designates (including OEHHA) carrying out the Governor's duties under Health and Safety Code section 25249.8.

Finally, the Chemical Industry Council cites a number of court cases in support of its assertion that no special express statutory APA exemption (including Health and Safety Code 25249.8, subdivision (e)) applies to the Prioritization Procedure.¹³ OAL has examined the cited court cases. These cases provide some support for the position that Proposition 65 regulations are generally (in the absence of an express statutory APA exemption) to be adopted in accordance with the APA—a position with which OAL agrees. However, none of the cited court cases discuss the issue of the scope of the APA exemption in Health and Safety Code section 25249.8, subdivision (e), and none of these cases in any manner indicate that this exemption would be inapplicable to the Prioritization Procedure.

For the reasons set forth above, OAL concludes that OEHHA's Prioritization Procedure does not constitute a regulation required to be adopted pursuant to the

¹³ The Chemical Industry Council's request for determination, pages 16 and 17.

APA. The Prioritization Procedure is an integral part and an essential step of the Governor and his designates carrying out the Governor's duties under Health and Safety Code section 25249.8, and therefore the adoption of the Prioritization Procedure falls with the scope of the express statutory APA exemption contained in Health and Safety Code section 25249.8, subdivision (e).¹⁴

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DAVID B. JUDSON
Deputy Director and Chief Counsel

DEBRA M. CORNEZ
Senior Counsel
Determinations Program Coordinator

BRADLEY J. NORRIS
Counsel

Regulatory Determinations Program
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814-4339
(916) 323-6225, CALNET 8-473-6225
Facsimile No. (916) 323-6826
Electronic Mail: staff@oal.ca.gov

¹⁴ In addition to the issue of whether the APA exemption in Health and Safety Code section 25249.8, subdivision (e), applies to the Prioritization Procedure, the Chemical Industry Council (in its request for determination) and OEHHA (in its response to the request for determination) have presented their positions regarding the following two additional issues: (1) whether the Prioritization Procedure is, in fact, a "regulation" within the technical meaning of Government Code section 11342.600, and (2) whether the Prioritization Procedure is exempt from the APA under the "internal management" APA exemption set forth in Government Code section 11340.9, subdivision (d). As discussed in the "ANALYSIS" section of this determination, OAL concludes that OEHHA, in adopting the Prioritization Procedure, was "not . . . considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370" pursuant to the APA exemption of Health and Safety Code section 25249.8, subdivision (e). This conclusion fully responds to the question of the applicability of the APA to the Prioritization Procedure. Therefore, we think that it is unnecessary for OAL to address the two additional issues mentioned above.

